

United States
Circuit Court of Appeals
For the Ninth Circuit. 8

DAVE NIELSON, CHARLES NIELSON, and
JAMES E. REESE,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Southern Division.

FILED

AUG 16 1927

F MONCKTON,
CLERK.

United States
Circuit Court of Appeals

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DAVE NIELSON, CHARLES NIELSON, and
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Wesley Lloyd	115
Affidavit of Wesley Lloyd	132
Arraignment and Plea of Charles Nielsen	14
Arraignment and Plea of Dave Nielsen	14
Arraignment of James E. Reece and Order for trial	5
Assignment of Errors Claimed by Charles Niel- son	101
Assignment of Errors Claimed by Dave Niel- son	96
Assignment of Errors Claimed by James E. Reese	106
Bail Bond of Charles Nielsen (Supplemental Transcript)	149
Bail Bond of Dave Nielsen (Supplemental Transcript)	145
Bail Bond of James Clifford Reese (Supple- mental Transcript)	151
Bill of Exceptions	25
Certificate of Clerk U. S. District Court to Transcript of Record	128

	Index.	Page
Certificate of Clerk U. S. District Court to Supplemental Transcript of Record (Supplemental Transcript)		156
Citation on Writ of Error		126
Cost Bond of Charles Nielson on Writ of Error		123
Cost Bond of Dave Nielson on Writ of Error .		121
Cost Bond of James E. Reese on Writ of Error		118
Demurrer of Charles Nielsen		13
Demurrer of Dave Nielsen		12
EXHIBITS:		
Exhibit "A" Attached to Affidavit of Wesley Lloyd—Telegram Dated December 7, 1926, Signed O'Brien, Deputy Clerk		117
Exhibit "A" Attached to Affidavit of Wesley Lloyd—Order		136
Hearing		118
Hearing on Motion for New Trial		24
Indictment		2
Judgment and Sentence of Charles Nielsen ..		21
Judgment and Sentence of Dave Nielsen		20
Judgment and Sentence of James Clifford Reese		21
Minutes of Court—June 12, 1926—Arraignment of James E. Reece and Order for Trial		5
Minutes of Court—June 25, 1926—Arraignment and Plea of Dave Nielsen		14

Index.	Page
Minutes of Court—July 6, 1926—Order Continuing Hearing upon Motion for New Trial and Denying Motion in Arrest of Judgment	19
Minutes of Court—July 7, 1926—Judgment and Sentence of Dave Nielsen	20
Minutes of Court—December 9, 1926—Hearing	118
Motion for Bill of Particulars of Dave Nielsen	8
Motion for Bill of Particulars of James E. Reece	10, 11
Motion for New Trial	16
Motion for Supersedeas	130
Motion in Arrest of Judgment	17
Names and Addresses of Attorneys of Record .	1
Names and Addresses of Attorneys of Record (Supplemental Transcript)	145
Notice of Application for Order of Supersedeas, etc.	114
Notice of Lodgment of Bill of Exceptions....	22
Order Allowing Writ of Error	111
Order Continuing Hearing upon Motion for New Trial and Denying Motion in Arrest of Judgment	19
Order Denying Motion for Bill of Particulars of Dave Nielsen	15
Order Settling Bill of Exceptions	93
Petition for an Order Suppressing Evidence..	6
Petition for Writ of Error.....	94

Index.	Page
Praeipce for Transcript of Record.....	127
Praeipce for Supplemental Transcript of Record on Writ of Error (Supplemental Transcript)	155
Stipulation Extending Time to and Including August 6, 1926, to Serve and File Amend- ments to Bill of Exceptions	23
Stipulation Re Hearing Motion for Supersedeas	138

TESTIMONY ON BEHALF OF THE GOV- ERNMENT:

BODAYLEA, JOHN G.	45
Cross-examination (By Mr. Woods)	47
Cross-examination (By Mr. Wright)	49
CROXALL, MARK WHITE	29
Cross-examination (By Mr. Woods)	40
Cross-examination (By Mr. Wright) ..	42
Redirect Examination	43
CROXALL, MARK Y. (Recalled).....	58
In Rebuttal	91
Cross-examination	91
ELLIOTT, THOMAS B. (Recalled)....	90
Cross-examination	90
JEFFREY, PAUL H.	59
Cross-examination (By Mr. Woods) ..	62
Cross-examination (By Mr. White) ..	62
LAMBERT, RICHARD A.	53
Cross-examination (By Mr. Woods) ..	55
Cross-examination (By Mr. Wright) ..	55
Redirect Examination	56
Recalled in Rebuttal.....	91

Index.	Page
TESTIMONY ON BEHALF OF THE GOVERNMENT—Continued:	
MAYBURY, CHARLES R.	56
NELSON, NOLAND A.	43
Cross-examination	44
Redirect Examination	45
MORBACHER, THEODORE	49
Cross-examination (By Mr. Woods) ..	52
Cross-examination (By Mr. Wright)..	52
Redirect Examination	53
UHLMAN, R. L.	57
Cross-examination	58
TESTIMONY IN BEHALF OF DEFENDANTS:	
AUSTIN, S. W.	73
Cross-examination	75
DUFFY, JOHN J.	78
ELLIOTT, THOMAS B.	81
Cross-examination	81
Recalled	89
Cross-examination (By Mr. Gordon)	89
FORD, HARRY	71
Cross-examination	72
NIELSEN, CHARLES	65
Cross-examination (By Mr. Wright)..	66
Cross-examination (By Mr. Gordon)..	68
Redirect Examination	70
NIELSEN, WILLIAM	76
Cross-examination	77
REECE, JAMES	82

Index.	Page
TESTIMONY ON BEHALF OF DEFEND-	
ANTS—Continued:	
Cross-examination (By Mr. Woods)	86
Cross-examination (By Mr. Gordon) ..	87
Redirect Examination	88
WHITE, A. B.	79
Cross-examination	80
WOOD, D. M.	71
Cross-examination	71
Verdict	15
Writ of Error	112
Writ of Error (Original)	140

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Federal Building, Tacoma, Washington,

Attorneys for Defendant in Error. [1*]

United States District Court, Western District of
Washington, Southern Division,

February Term, 1926.

No. 5436.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVE NIELSEN, CHARLES NIELSEN,
JAMES E. REECE and NOLAND NEL-
SON,

Defendants.

*Page-number appearing at the foot of page of original certified
Transcript of Record.

INDICTMENT.

Vio. Section 37 P. C. (National Prohibition Act and Revenue Acts).

United States of America,
Western District of Washington,
Southern Division,—ss.

The grand jurors of the United States of America, being duly selected, impaneled, sworn and charged to inquire within and for the Southern Division of the Western District of Washington, upon their oaths present:

COUNT I.

That DAVE NIELSEN, CHARLES NIELSEN, JAMES E. REECE and NOLAND NELSON, and each of them, on or about the eighth day of May, in the year of our Lord, one thousand nine hundred twenty-six, or upon a day within two years prior thereto, to the grand jurors unknown, within the Southern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, wilfully, unlawfully and feloniously combine, conspire, confederate and agree together, and one with the other, and with divers persons to the grand jurors unknown, to commit certain offenses against the United States; that is to say, to violate the provisions of the Act of Congress passed October 28th 1919, and known as the National Prohibition Act, and of certain statutes in aid of the revenues of the

United States, it being then and there the plan, purpose and object of said conspiracy and the object of said persons so conspiring together as aforesaid, and hereinafter referred to as the conspirators, knowingly, wilfully and unlawfully to manufacture and possess, in said Division and District, certain intoxicating liquors, to wit, distilled [2] spirits called moonshine whiskey containing more than one-half of one per centum of alcohol by volume, and fit for use for beverage purposes.

That said conspiracy was and is a continuing conspiracy, continuing from May 8th, 1926, or a prior day to the grand jurors unknown, and up to the time of the presentment of this indictment.

OVERT ACTS.

1. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators, or one or more of them, at a place near the Nisqually River and about two miles east of the Rainier National Park, and near the abandoned camp of the Anderson and Hall Lumber Company, and in Lewis County, Washington, in said Division and District, the same not then and there being upon lands authorized or licensed for use as a distillery, did then and there knowingly, wilfully and unlawfully set up and possess a certain three hundred fifty (350) gallon copper still intended and fit for the distillation of alcoholic spirits.

2. That after the formation of said conspiracy

and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators, or one or more of them, at the place described under the averment number one of Overt Acts herein, did unlawfully make and ferment or cause to be made and fermented, about two thousand (2,000) gallons of cornmeal and sugar mash, fit for and by said conspirators intended to be used for the distillation of alcoholic spirits, to wit, moonshine whiskey.

3. That after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators, or one or more of them, at the place and by means and use of the still described under averment number one of Overt Acts herein, did unlawfully make, distill and manufacture about seven (7) gallons of alcoholic spirits, to wit, moonshine whiskey, and that none of said conspirators had theretofore given any bond to the United States as required by law of persons engaging in the business of distillers [3] of alcoholic spirits.

4. That after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, and on or about May 18th 1926, the said conspirators, or one or more of them, did unlawfully have and possess certain intoxicating liquor and distilled spirits, to wit, about seven (7) gallons of moonshine whiskey at the place described in the averment number one of Overt Acts, upon which distilled spirits the tax due the United States had not been paid.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE,

United States Attorney.

CARROLL A. GORDON,

Assistant United States Attorney.

[Indorsed]: Presented to the Court by the Foreman of the Grand Jury in open Court in the presence of the Grand Jury, and filed in the U. S. District Court June 5, 1926. [4]

COPY OF JOURNAL RECORD (COURT
MINUTES).

At a regular session of the United States District Court for the Western District of Washington held at Tacoma in the Southern Division thereof on the 12th day of June, 1926, the Honorable EDWARD E. CUSHMAN, United States District Judge for the Western District of Washington presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of Cause.]

ARRAIGNMENT OF JAMES E. REECE AND
ORDER FOR TRIAL.

Now on this 12th day of June, 1926, defendant Reece, with P. L. Pendleton as his attorney, is in

court and is arraigned. Asked as to his true name, he says that his true name is James Clifford Reese whereupon it is ordered that this cause proceed under that name. Defendant enters a plea of Not Guilty and trial of this cause is set for June 22d, 1926, 6th case. [5]

PETITION FOR AN ORDER SUPPRESSING EVIDENCE.

To the Hon. EDWARD E. CUSHMAN, Judge of
the Above-entitled Court:

Comes now Noland Nelson and respectfully shows and represents unto your Honor:

That he is one of the defendants above named; that on the 8th day of May, 1926, and for sometime prior thereto he occupied as his home a certain cabin or shack located on or near the Nisqually River near the abandoned camp of the Anderson & Hall Lumber Company, in Lewis County, Washington.

That your petitioner is advised that on the 8th day of May, 1926, Major Mark Y. Croxall, and R. A. Lambert, Federal prohibition officers, and certain other persons unknown to your petitioner, came to the defendant's home and without any warrant or right or authority of law, and in violation of defendant's constitutional rights, proceeded to enter his said home and to search the same.

Your petitioner further alleges that he is advised that the said Federal prohibition officers claim to have found in his said home while making such un-

lawful search a certain bottle said to have contained moonshine whiskey, which said officers seized and carried away.

Your petitioner further represents that thereafter your petitioner, together with the other defendants above named, was indicted by the grand jury empanelled by this Court upon a charge of conspiracy to violate the National Prohibition Act, and your petitioner is advised that upon the trial of said cause, as evidence against this petitioner, the United States District Attorney and said officers propose to produce and will produce such alleged intoxicating liquor and that said officers will be called as witnesses for the purpose of showing this defendant's possession of the same.

WHEREFORE, your petitioner prays that an order may be entered herein suppressing said alleged evidence and that said officers be prohibited from offering such evidence or any evidence gained by them at said time by reason of such unlawful search upon such trial [6] against your petitioner.

NOLAND NELSON,
Petitioner.

By LYLE, HENDERSON & CARNAHAN,
Attorneys for Petitioner.

State of Washington,
County of Pierce,—ss.

Frank M. Carnahan, being first duly sworn on oath, says: That he is of counsel for the petitioner above named and that he makes this verification on

behalf of the petitioner upon his information and belief and for the reason that the petitioner is not at this time in Pierce County, Washington, and affiant is unable to get in immediate communication with him. That he has read the above and foregoing petition, knows the contents thereof, and that he believes the statements therein to be true.

FRANK M. CARNAHAN.

Subscribed and sworn to before me this 18th day of June, 1926.

[Notary Seal] J. L. BENTSON,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Rec'd copy June 18, 1926.

CARROLL A. GORDON,
Asst. U. S. Atty.

[Endorsed]: Filed June 18, 1926. [7]

MOTION FOR BILL OF PARTICULARS OF DAVE NIELSEN.

Comes now the defendant Dave Nielsen and moves the Court for an order requiring the District Attorney to furnish this defendant a bill of particulars giving a more particular description of the transactions upon which the charges are based and further identification of them for the reason that the indictment is so indefinite that the precise charge against these defendants is not apparent.

RALPH WOODS,
Attorney for Defendant Dave Nielsen.

State of Washington,
County of Pierce,—ss.

Dave Nielsen, being first duly sworn on oath, deposes and says: That he is one of the defendants in the above-entitled action; that the alleged Overt Acts are so indefinite that this defendant does not know the precise charge upon which he is being prosecuted; that he cannot intelligently prepare for trial without the bill of particulars showing the evidence to be produced; that the premises and location on which it is alleged this defendant committed the Overt Acts are not sufficiently described; that this defendant cannot safely go to trial without such statement of facts.

DAVE NIELSEN,

Subscribed and sworn to before me this 22 day of June, 1926.

[Notary Seal] RALPH WOODS,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Service admitted June 22d, 1926.

CARROLL A. GORDON,
Asst. U. S. Atty.

[Endorsed]: Filed June 22, 1926. [8]

MOTION FOR BILL OF PARTICULARS OF JAMES E. REECE.

Comes now the defendant James E. Reece and moves the Court for an order requiring the District Attorney to furnish this defendant with a bill of particulars giving a more particular description of the transactions upon which the charges are based and a better description of the premises and further identification of the premises for the reason that the indictment is so indefinite that the precise charge against this defendant is not apparent.

SAM A. WRIGHT

Attorney for Defendant, James E. Reece,

Office and Post Office Address:

Suit 629 Burke Bldg., Seattle, Washington.

State of Washington,

County of Pierce,—ss.

James E. Reece, being first duly sworn on oath, deposes and says: That he is one of the defendants in the above-entitled action; that the alleged Overt Acts are so indefinite that this defendant does not know the precise charge upon which he is being prosecuted; that he cannot intelligently prepare for trial without a bill of particulars showing the evidence to be produced; That this defendant cannot safely go to trial without a bill of particulars showing exactly what the prosecution will produce.

JAMES REESE.

Subscribed and sworn to before me this 22d day of June, 1926.

[Notarial Seal] CHAS. L. WESTCOTT,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Service admitted this 22d day of June, 1926.

CARROLL A. GORDON,
Asst. U. S. Atty.

[Endorsed]: Filed June 22, 1926. [9]

MOTION FOR BILL OF PARTICULARS OF
JAMES E. REECE.

Comes now the defendant James E. Reece and moves the Court for an order requiring the District Attorney to furnish this defendant a bill of particulars giving a more particular description of the transactions upon which the charges are based and further identification of them for the reason that the indictment is so indefinite that the precise charge against this defendant is not apparent.

SAM A. WRIGHT,
Attorney for Defendant.

Office and Post Office Address:

Suite 628 Perkins Bldg., Tacoma, Washington.

State of Washington,
County of Pierce,—ss.

James E. Reece, being first duly sworn on oath, deposes and says: That he is one of the defendants in the above-entitled action; that the alleged Overt Acts are so indefinite that this defendant does not

know the precise charge upon which he is being prosecuted; that he cannot intelligently prepare for trial without the bill of particulars showing the evidence to be produced; that the premises on which it is alleged this defendant committed the Overt Acts are not sufficiently described; that this defendant cannot safely go to trial without such statement of facts.

JAMES REESE.

Subscribed and sworn to before me this 18th day of June, 1926.

[Notary Seal] SAM A. WRIGHT,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Service admitted June 22d, 1926.

CARROLL A. GORDON,
Asst. U. S. Atty.

[Endorsed]: Filed June 22, 1926. [10]

DEMURRER OF DAVE NIELSEN.

Comes now Dave Nielsen by Ralph Woods, his attorney, and demurs to the indictment filed herein and as grounds of demurrer says:

I.

That said indictment does not state facts sufficient to constitute a crime under the statutes of the United States.

II.

That the indictment does not sufficiently inform

the accused of the nature and cause of accusation against him.

RALPH WOODS,
Attorney for Defendant Dave Nielsen.

[Indorsed]: Receipt of a copy of the within pleading and service acknowledged 6/24/26.

CARROLL A. GORDON,
Asst. U. S. Atty. H.

[Indorsed]: Filed Jun. 24, 1926. [11]

DEMURRER OF CHARLES NIELSEN.

Comes now Charles Nielsen by Ralph Woods, his attorney, and demurs to the indictment filed herein and as grounds of demurrer says:

I.

That said indictment does not state facts sufficient to constitute a crime under the statutes of the United States.

II.

That the indictment does not sufficiently inform the accused of the nature and cause of accusation against him.

RALPH WOODS,
Attorney for Defendant Charles Nielsen.

[Indorsed]: Receipt of a copy of the within pleading and service acknowledged 6/24/26.

CARROLL A. GORDON,
Asst. U. S. Atty. H.

[Indorsed]: Filed Jun. 24, 1926. [12]

COPY OF JOURNAL RECORD (COURT
MINUTES).

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division of said District, on the 25th day of June, 1926, the Honorable EDWARD E. CUSHMAN, United States District Judge for the Western District of Washington presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said court, as follows:

[Title of Cause.]

ARRAIGNMENT AND PLEA OF DAVE NIELSEN.

Now on this 25th day of June, 1926, defendant Dave Nielsen is in court and is arraigned. Ralph Woods is his attorney. He says that his name is as given in the indictment and enters a plea of Not Guilty.

[Title of Cause.]

ARRAIGNMENT AND PLEA OF CHARLES NIELSEN.

Now on this 25th day of June, 1926, defendant Charles Nielsen is in Court and is arraigned. He says that his name is as given in the indictment. Ralph Woods is attorney for defendant, who enters a plea of Not Guilty. [13]

ORDER DENYING MOTION FOR BILL OF
PARTICULARS OF DAVE NIELSEN.

This matter came on for hearing on the 22d day of June, 1926, on motion of the defendant Dave Nielsen for a bill of particulars and the plaintiff appearing by Carroll A. Gordon, Assistant United States Attorney, the defendant Dave Nielsen appearing by Ralph Woods, his attorney, after argument of counsel—

IT IS HEREBY ORDERED that said motion be, and the same hereby is overruled and denied, to which said defendant excepts and his exception is hereby allowed.

Dated June 25, 1926.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Filed Jun. 25, 1926. [14]

VERDICT.

We, the jury empanelled in the above-entitled cause, find the defendant Dave Nielsen is Guilty as charged in Count I of the Indictment filed herein; and further find the defendant Charles Nielsen is Guilty as charged in Count I of the Indictment filed herein; and further find the defendant James

Clifford Reese is Guilty as charged in Count I of the Indictment filed herein.

J. T. ESHELMAN,
Foreman.

[Indorsed]: Filed Jun. 30, 1926. [15]

MOTION FOR NEW TRIAL.

Come now the defendants and move the Court to vacate the verdict and grant these defendants a new trial for the following reasons:

I.

Error of law occurring at the time of the trial and excepted to by these defendants.

II.

Accident and surprise which ordinary prudence could not have guarded against.

III.

Insufficiency of the evidence to justify the verdict.

IV.

Failure of witnesses to appear when promised.

V.

Misconduct of the jury.

VI.

Abuse of discretion whereby these defendants were prevented from having a fair trial. [16]

VII.

The Court erred in overruling the defendants'

motion for a directed verdict in favor of the defendants.

VIII.

The Court erred in stating to the jury that the matter of place alleged in the Overt Acts is immaterial.

IX.

The Court erred in permitted evidence of other crimes to go to the jury.

X.

There were many other errors occurring at the time of trial.

RALPH WOODS,

Attorney for Defendants Dave Nielsen and Charles Nielsen,

Office and Postoffice Address:

Suite 628 Perkins Bldg., Tacoma, Washington.

FRANK S. CARROLL,

Attorney for Deft. James Reese,
Room 408 Equitable Bldg., Tacoma, Wn.

Recd. copy Jul. 1, 1926.

CARROLL A. GORDON,

Asst. U. S. Atty.

[Indorsed]: Filed Jul. 1, 1926 [17]

MOTION IN ARREST OF JUDGMENT.

Comes now the defendants Dave Nielsen, Charles Nielsen and James E. Reece and move the Honorable Court for an order arresting and setting aside the judgment in the above-entitled cause and for

a judgment of dismissal notwithstanding the verdict of the jury upon the grounds and for the reasons:

I.

That the verdict of the jury is contrary to the law and the evidence.

II.

That the verdict of the jury was based upon incompetent, irrelevant and illegal evidence presented at the trial and allowed to be introduced over the objection of the defendants herein, to which rulings of the Court the defendants excepted, and which exceptions were allowed by the Court.

III.

That there was no competent evidence submitted to the jury upon which the jury could have based a verdict of guilty.

LLOYD and CROTEAU,
Attorneys for Defendants.

[Endorsed]: Filed July 1, 1926. [18]

COPY OF JOURNAL RECORD.

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma in the Southern Division of said District on July 6, 1926, the Honorable EDWARD E. CUSHMAN, United States District Judge for the Western District of Washington presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal proceedings of said Court as follows:

[Title of Cause.]

ORDER CONTINUING HEARING UPON MOTION FOR NEW TRIAL AND DENYING MOTION IN ARREST OF JUDGMENT.

Now on this 6th day of July, 1926, IT IS ORDERED that the hearing upon motion for new trial be continued to September 27th, 1926. Upon hearing argument of motion in arrest of judgment, the motion is denied and exception allowed. Passing of sentence is continued to 10 A. M. (July 7, 1926). [19]

COPY OF RECORD FROM JUDGMENT AND
SENTENCE JOURNAL.

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division of said District, on July 7, 1926, the Honorable EDWARD E. CUSHMAN, United States District Judge presiding, among other proceedings had were the following, truly taken and correctly copied from the Judgment and Decree Journal of said court as follows, to wit:

[Title and Cause.]

JUDGMENT AND SENTENCE OF DAVE
NIELSEN.

Now on this 7th day of July, 1926, defendant Dave Nielsen is before the Court for sentence and being informed of the indictment returned against him in this cause and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him at this time, he nothing says save as before he hath said. Wherefore, by reason of the law and the premises, it is by the Court CONSIDERED, ORDERED AND ADJUDGED that the defendant is guilty of violation of Section 37, P. C. (National Prohibition Act and Revenue Acts), and that he be sentenced to be imprisoned in the United States Penitentiary at McNeil Island, Washington, for a period of One Year and One Day and to pay a fine of One

Thousand Dollars and that execution therefor after disposition of motion for new trial.

[Title of Cause.]

JUDGMENT AND SENTENCE OF CHARLES
NIELSEN.

Now on this 7th day of July, 1926, defendant Charles Nielsen is before the Court for sentence and being informed of the indictment returned against him in this cause and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him at this time, he nothing says save as before he hath said. Wherefore, by reason of the law and the premises, it is by the Court **CONSIDERED, ORDERED AND ADJUDGED** that the defendant is guilty of violation of Section 37, Penal Code (National Prohibition Act and Revenue Acts), and that he be sentenced to be imprisoned in the Pierce County Jail for a period of Six Months and to pay a *fine* [20] *Five* Hundred Dollars and that execution issue therefor after disposition of motion for new trial.

[Title of Cause.]

JUDGMENT AND SENTENCE OF JAMES
CLIFFORD REESE.

Now on this 7th day of July, 1926, defendant James Clifford Reese is before the Court for sentence and being informed of the indictment re-

turned against him in this cause and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him at this time, he nothing says save as before he hath said. Wherefore, by reason of the law and the premises, it is by the Court CONSIDERED, ORDERED AND ADJUDGED that the defendant is guilty of violation of Section 37, Penal Code (National Prohibition Act and Revenue Acts), and that he be sentenced to be imprisoned in the Pierce County Jail for a period of Three Months and to pay a fine of Two Hundred and Fifty Dollars and that execution issue therefor after disposition of motion for new trial. [21]

NOTICE OF LODGMENT OF BILL OF EXCEPTIONS.

THOMAS P. REVELLE, United States District Attorney.

CARROLL A. GORDON, Assistant United States District Attorney, for the Western District of Washington.

PLEASE TAKE NOTICE that the undersigned have this 20th day of July, 1926, lodged in the office of the Clerk of the District Court of the United States, for the Western District of Washington, Southern Division, at Tacoma, in which Court this case is pending, a bill of exceptions to the rulings of the Court in the trial of the above-

entitled cause, the same to be presented to the Honorable Edward E. Cushman, Judge of said court, who tried said cause, at the first available sitting of said Court for approval and settlement, a copy of which proposed bill of exceptions is herewith served upon you.

LLOYD & CROTEAU.

F. S. CARROLL. [22]

[Indorsed]: Received this 20th day of July, 1926, copy of the within notice.

CARROLL A. GORDON,

Asst. U. S. Atty.

[Indorsed]: Filed Jul. 20, 1926. [23]

STIPULATION EXTENDING TIME TO AND
INCLUDING AUGUST 6, 1926, TO SERVE
AND FILE AMENDMENTS TO BILL OF
EXCEPTIONS.

IT IS HEREBY STIPULATED between the plaintiff and the defendants that the plaintiff may have to and including the 6th day of August, 1926, within which to serve and file such amendments as it may desire to propose to the bill of exceptions proposed by the defendants herein, and that an order extending the said time accordingly may be made and entered by the Court at any time without notice.

Dated at Tacoma, Washington, this 30th day of July, 1926.

THOS. P. REVELLE,

U. S. Atty.

CARROLL A. GORDON,

Asst. U. S. Atty.

LLOYD & CROTEAU,

Attorneys for Defendants.

[Indorsed]: Filed Jul. 30, 1926. [24]

COPY OF JOURNAL RECORD.

At a regular session of the United States District Court for the Western District of Washington held at Tacoma in the Southern Division of said District on the 11th day of October, 1926, the Honorable EDWARD E. CUSHMAN, United States District Judge presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of Cause.]

HEARING ON MOTION FOR NEW TRIAL.

On this 11th day of October, 1926, this cause comes on for hearing of motion for new trial argued by F. S. Carroll for James Clifford Reese and Wesley Lloyd for Dave Nielsen and Charles Nielsen. The Court hears the matter and denies the motion and exception is allowed. Commitment herein is stayed. [25]

BILL OF EXCEPTIONS.

Appearances:

CARROLL A. GORDON, Assistant United States District Attorney, for the United States of America.

RALPH WOODS, for the Defendants Dave Nielsen and Charles Nielsen;

SAM A. WRIGHT, for the Defendant James E. Reece.

LYLE, HENDERSON & CARNAHAN, for the Defendant Noland Nelson. [26]

BE IT REMEMBERED: That on the 5th day of June, 1926, an indictment was returned in the above-entitled court charging the defendants Dave Nielsen, Charles Nielsen, James E. Reece and Noland Nelson with having violated Section 37, P. C., an Act of October 28th, 1919, of the Revised Statutes of the United States, in that the said Dave Nielsen, Charles Nielsen, James E. Reece and Noland Nelson, and each of them, on or about the 8th day of May in the year of our Lord, 1926, or upon a day within two years prior thereto, to the grand jurors unknown, within the Southern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there being, did then and there knowingly, wilfully, unlawfully and feloniously combine, conspire, confederate and agree together, and one with the other, and with diverse persons to the grand jurors unknown, to commit certain offenses against

the United States; that is to say, to violate the provisions of the Act of Congress passed October 28th, 1919, and known as the National Prohibition Act, and of certain statutes in aid of the revenues of the United States, it being then and there the plan, purpose and object of said conspiracy and the object of said persons so conspiring together as aforesaid, and hereinafter referred to as the conspirators, knowingly, wilfully and unlawfully to manufacture and possess, in said Division and District, certain intoxicating liquors, to wit: Distilled spirits called moonshine whiskey containing more than one-half of one per centum of alcohol by volume, and fit for use for beverage [27] purposes.

That said conspiracy was and is a continuing conspiracy, continuing from May 8th, 1926, or a prior day to the grand jurors unknown, and up to the time of the presentment of this indictment.

That after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators, or one or more of them, at a place near the Nisqually River and about two miles east of the Rainier National Park, and near the abandoned camp of the Anderson and Hall Lumber Company, and in Lewis County, Washington, in said Division and District, the same not then and there being upon lands authorized or licensed for use as a distillery, did then and there knowingly, wilfully and unlawfully set up and possess a certain three hundred fifty (350) gallon copper still intended and fit for the distillation of alcoholic spirits.

That in order to effect the object of said conspiracy, the said conspirators, or one or more of them, at the place described did unlawfully make and ferment or cause to be made and fermented, about two thousand (2,000) gallons of cornmeal and sugar mash, fit for and by said conspirators intended to be used for the distillation of alcoholic spirits, to wit: Moonshine whiskey.

That after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators, or one or more of them, at the place and by means and use of the still described did unlawfully make, distill and manufacture about seven (7) gallons of alcoholic spirits, to wit: Moonshine whiskey, [28] and that none of said conspirators had theretofore given any bond to the United States as required by law of persons engaging in the business of distillers of alcoholic spirits.

That after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, and on or about May 18th, 1926, the said conspirators, or one or more of them, did unlawfully have and possess certain intoxicating liquor and distilled spirits, to wit: About seven (7) gallons of moonshine whiskey at the place described upon which distilled spirits the tax due the United States had not been paid.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Thereupon the defendant Noland Nelson petitioned the Court to suppress said evidence, i. e.: A small quantity of whiskey found in a bottle in a small shack occupied by him as his home; and in his petition alleged that said premises had been searched without warrant and in his absence and without his knowledge, which petition was in the form of an affidavit duly sworn to. Thereupon said matter came on for hearing upon the petition to suppress; and thereupon the petitioner rested upon his affidavit; and the Government, to sustain its claim of validity for said search and seizure, without warrant, introduced as a witness one Mark White Croxall, who, being duly sworn, testified as follows:

That he is and was at all times mentioned a deputy internal revenue collector for the United States Government and a prohibition agent for the United States Government. [29]

That on the 18th day of May, 1926, in company with three deputy sheriffs for Pierce County, without warrant, went to the residence of the defendant Noland Nelson; and that there said deputy sheriffs for Pierce County, acting under the direction of the witness, an officer of the United States Government, searched said premises and there found the evidence sought to be suppressed.

That thereupon the Court made and entered an order denying the petition to suppress, to which order the defendant Noland Nelson excepted, and the exception was allowed.

That thereafter, on the 24th day of June, 1926,

(Testimony of Mark White Croxall.)

defendants Dave Nielson, Charles Nielson and James E. Reece filed their demurrer to the indictment, which demurrer was upon the ground that said indictment failed to state facts sufficient to constitute an offense against the laws of the United States of America. Which demurrer was by the Court on the 25th day of June, 1926, overruled, to which said defendant excepted, and exceptions allowed.

Thereafter on the 25th day of June, 1926, upon the motion of the District Attorney said indictment was nollied and dismissed as to the defendant Noland Nelson.

On the same day, i. e., the 25th day of June, 1926, the defendants Dave Nielson, and Charles Nielsen were arraigned and entered their several pleas of not guilty to the indictment filed against them. The defendant James E. Reece was not arraigned and did not plead to the indictment.

Thereafter on the said 25th day of June, 1926, said cause proceeded to trial before a jury regularly impaneled and sworn to try the case; and the following proceedings were had and done: [30]

TESTIMONY OF MARK WHITE CROXALL, FOR THE GOVERNMENT.

MARK WHITE CROXALL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

My name is Mark White Croxall. On the 18th day of May, 1926, I was prohibition agent and

(Testimony of Mark White Croxall.)

deputy collector of internal revenues stationed at Tacoma.

On that date, in company with Prohibition Agent Richard Lambert and Deputy Sheriffs Theodore Moorebacker, John Bodaglia and Paul Jerrery, I went to an abandoned camp of the Anderson-Hall Lumber Company, about two miles this side of Rainier National Park and to the right of the Mountain Highway, four or five hundred yards off the highway. The camp consists of a number of abandoned shacks that have been used for a lumber camp, a garage and a barn. In the garage were two automobiles and in the barn another. There were fresh tracks leading north from the barn and garage down to the river bank, across the fork of the Nisqually River on a log, and came to the main part of the stream. I followed the tracks upstream for about fifty yards in the sand and started into the brush. When we got to the brush there was a well-defined trail. When I came to the bank of Big Creek about three or four hundred yards up the trail I saw some smoke in the woods, and when I was about fifty yards from this smoke I heard someone yell, "Look out!" Three or four men ran from where the smoke was. I took after two of them, but was unable to apprehend them. I fired two shots, one into the ground and one into the air, and called to them to stop and told them who I was. I spent about half an hour trying to locate these men in the woods. I came back to where the smoke was and there I found Deputy Sheriff Paul

(Testimony of Mark White Croxall.)

Jerrery and John Bodaglia. There we found a [31] 350-gallon still, two approximately 1,000-gallon mash tanks, three 52-gallon barrels, two kegs, 5-gallon kegs, one containing about two gallons of whiskey and the other about four or five gallons. One of the tanks contained mash which was composed of sugar and a finely granulated cornmeal and was in a high state of fermentation. The still was not in operation, but there was a fire under it and it was full of hot water. The other tank was full within eight or ten inches of the top and the water in the tank was warm. Right on top of the water was some white granulated cornmeal floating. At the side of these tanks were four 100 pound sacks or 98 pound sacks of granulated sea island sugar. Also two or three coils which were used to super-heat whiskey. They are used for the purpose of ageing whiskey. There was also a brindle pit bull dog at the still.

The entire plant was destroyed by burning it. A sample of the sugar was taken.

I then returned over the trail and went to the garage and examined closely the tracks that led from the garage down to the trail.

One of the automobiles in the garage bore license No. 111205. The car I had seen was a Buick touring car belonging to the defendant Dave Nielsen. The back seat of the car was out. There was a rug in the back of the car that had a fringe on the edge of it. This fringe was covered with gunny sack lint. The other car was a new Ford touring car

(Testimony of Mark White Croxall.)

with a temporary license No. 5693, Pierce County. In the bottom of this car was a little finely granulated cornmeal of similar kind and texture as that which was found in the mash tank at the still. The back seat of this car was also missing. [32]

In the barn I found a Chevrolet roadster license No. 111206, belonging to Charles Nielsen. In the left-hand pocket of the driver's seat of this car was a 45 Smith & Wesson revolver, loaded. Under the seat was an empty sea island sugar sack. In the back of this Chevrolet roadster was more of this fine white cornmeal, granulated. In the barn beside the car was the imprint of two 5 gallon kegs, i. e., the imprint compared favorably in size with the bottom of a 5 gallon keg. They were similar.

By the side of the car in the barn was an old mattress and under the mattress were ten or twelve sea island sugar sacks empty. There was no dust on the mattress and no accumulation of cobwebs.

We then went back to the shacks. The first shack as you enter the camp, on the right side, immediately in the rear of that, Deputy Sheriff Morbacher came out with a sack of copper clippings from the wood. Under the back porch, which had the planks out, were two one-gallon glass jugs, which were wet with moonshine whiskey. We entered the shack, which was not locked, and found a driver's license and operator's license for the automobile listed to James Reece.

There were also cooking utensils, food, a bed, some shoes, some fishing tackle; and there was a

(Testimony of Mark White Croxall.)

fish basket there that was filled with No. 10 corks—the same size they use in 5-gallon kegs. In this shack was also some of this sea island sugar, just a small amount among the groceries. Sea island sugar is crystallized cane sugar that resembles rock candy very much.

(Whereupon witness was shown a sack and its contents consisting of sea island sugar, which was admitted in evidence and marked Government's Exhibit No. 1.) [33]

Witness further testified that Exhibit No. 1 was taken from the still described in his testimony.

(Thereupon the Government offered in evidence Government's Exhibit No. 2, being a gunny-sack of copper clippings, which was admitted.)

WITNESS.—(Continuing.) These are the copper clippings from sheet copper that we found 75 or 100 feet in the brush immediately in the rear of the Reece cabin. They were found by Deputy Sheriff Morbacher, and were shown to me in the woods. The texture and weight of this copper is similar to that from which the still was made. My attention being called to the circular collar made of copper, I would say that the piece that was cut from that was a part of the dome of the still. They were about the same diameter at that. I couldn't say anything about the rest of it.

While we were there and had been in the cabin a few minutes, the brindle pit bulldog that we saw at the still came into the cabin. He entered the door and went in and laid down under the table. I

(Testimony of Mark White Croxall.)

called the dog up to me and felt him all over and he was wet as though he had been in the water. He was wet all over. This is the same dog that I had seen at the still.

We then entered the second cabin on the right. The back door was open in that cabin. In that cabin was a bed, a gasoline stove, some groceries. On the bed Mr. Lambert—I think it was—found a part of a pint bottle of whiskey. He called me over and called my attention to it and a quart bottle that had whiskey in it. It had just a little in the bottom of it.

The back seat of the Ford touring car was also in this cabin. That is, it was the back seat of a Ford touring car. [34]

Calling my attention to Government's Exhibit No. 3 for identification, that is part of a pint of liquor that was found in the cabin. It has the same flavor and the same taste as that found at the still. The flavor is distinctive. I recognize the flavor and taste of the whiskey found at the still and that in this bottle marked Government's Exhibit No. 3 for identification, as having been tasted by me before. It has a peculiar flavor. I do not know how I would describe it any more than I know the difference in flavors of anything I taste. I had tasted it twice before near the Oscar Nielsen place.

Mr. WOODS.—I object to that and move to strike the answer. Oscar Nielsen is not a defendant in this action.

(Testimony of Mark White Croxall.)

The COURT.—The objection will be sustained and the motion to strike granted. The jury is instructed to disregard the answer of the witness.

Mr. GORDON.—May I interrogate further along the same lines?

The COURT.—Yes.

Q. Who is Oscar Nielsen?

Mr. WOODS.—We object to that.

The COURT.—Overruled.

Mr. WOODS.—Exception.

The COURT.—Allowed.

A. Oscar Nielsen is the brother of Dave Nielsen.

WITNESS.—(Continuing.) The Oscar Nielsen place is to the right of the Weyerhaeuser school-house out on the mountain road, probably half a mile away, and about fifteen miles south of Tacoma. I do not know whether Dave was living at the Oscar Nielsen place at the time or not. I know that I [35] arrested him there.

Mr. WOODS.—I object to that. Do you mean to say you arrested him there on this charge involved in this case?

A. Not in this case. Not in this case, no.

The COURT.—Objection overruled. Was it before this case?

A. Yes.

The COURT.—Objection overruled.

Mr. WOODS.—Exception.

WITNESS.—(Continuing.) I could not give you the exact date. It was on my case report. I could not give the exact date.

Mr. WRIGHT.—The defendant Reece objects to that evidence as being entirely too remote, and in no way connecting him with it.

The COURT.—Objection will be overruled. The jury will understand this is a conspiracy case; and one of the essential elements of this prosecution is to show by the evidence beyond a reasonable doubt that these defendants were acting in concert and by agreement to break the law in the way it is described in the indictment. Now, whether they were acting in concert or not in this particular transaction is going to be shown by circumstantial evidence. There is no way for the Court to determine in advance whether all of these circumstances are going to bear on that question or not. The indictment alleges that these defendants not only conspired together among themselves, but with other persons to the grand jurors unknown. I will overrule the objection.

Mr. WRIGHT.—Exception.

The COURT.—Allowed.

Mr. WOODS.—We also except to the ruling of the Court, [36] and we move to strike the testimony for the reason that it is an attempt to show that two years ago he drank some whiskey, and that now he has some that tastes the same.

The COURT.—I will sustain that objection. He said he drank some whiskey that tasted like this near Oscar Nielsen's cabin. For all the Court knows, he took it there himself. I don't know how it got there. There is no evidence regarding that. So I

(Testimony of Mark White Croxall.)

sustain the objection to that testimony, and I will instruct the jury to disregard it.

Q. At that time you have spoken of, when you drank some whiskey that tasted like this near Oscar Nielsen's cabin, where did you find that whiskey?

Mr. WOODS.—I thought your Honor sustained that objection that we made to that testimony?

The COURT.—No. The question was did he drink some whiskey that tasted like that near Oscar Nielsen's cabin, and that is as far as his answer went. He did not say where he tasted it, nor where it came from, or anything of that kind.

A. Some whiskey was found in the barn on Oscar Nielsen's place. The same party found it at the still where Dave Nielsen was.

Q. Did you find Dave Nielsen at that still?

A. Yes.

Mr. WOOD.—We object to that for the further reason that there is no contention of an overt act at that time. The only contention as to an overt act is these set forth in the complaint here made.

The COURT.—You are not confined to overt acts to show the arrest of the defendant Dave Nielsen. Objection overruled. [37]

Mr. WOODS.—Exception.

Q. What was Dave Nielsen doing apparently at the still at that time two years ago?

A. He was running the still.

Q. Was he afterwards charged with that offense in this Court? A. He was.

Q. What was his plea, if any, to that charge?

(Testimony of Mark White Croxall.)

A. Plea of guilty.

Mr. WOODS.—We object to that, and move to strike the answer.

Mr. GORDON.—This is merely for the purpose of showing that the whiskey that Dave Nielsen admitted two years ago having manufactured was identical in kind, taste and odor, with this whiskey that was found in this still on May 18th, 1926, at the place alleged in the indictment.

The COURT.—Objection overruled. The jury will understand that you cannot convict a man of one crime when he is being tried for another crime. All this evidence is going in for and is allowed to go in for is to show, if the prosecution can show it, that this was whiskey of a peculiar sort and origin, as being one of the circumstances in the case; that this liquor is similar to liquor which had theretofore been manufactured by the defendant Dave Nielsen.

Mr. WOODS.—We note an exception.

The COURT.—Exception allowed.

Mr. WOODS.—We also object to the statement of counsel that defendant Dave Nielsen was convicted two years ago on a similar charge.

Mr. WRIGHT.—May it be understood that the objection of defendant James Reece goes to this evidence as being too [38] remote; and may we have an exception to the ruling?

The COURT.—Exception allowed. The jury will bear in mind that as far as the defendant Reece is concerned, you cannot consider anything

(Testimony of Mark White Croxall.)

that touches the defendant Nielsen alone until the time that the Government shows that as far as defendant Reece is concerned, until the Government shows that Nielsen and Reece were acting in concert in the manner described in the indictment.

Mr. WOODS.—Our objection goes also to the defendant Charles Nielsen.

The COURT.—Yes. The jury will understand that defendant Charles Nielsen is in the same position as the defendant Reece. Exceptions will be allowed and noted.

Q. (Mr. GORDON.) Now, will you state, Major, as to the whiskey that you tasted at the time of the arrest of Dave Nielsen in 1924, if it was in 1924, on the previous occasion upon the Oscar Nielsen place, when Dave Nielsen was so operating that still, whether that compared in the respects I have described with this liquor which was found in this cabin and is in evidence here as Government's Exhibit 3?

A. It had the same flavor.

WITNESS. — (Continuing.) In the second cabin, which was about 25 or 30 feet from the next cabin where the other things and the license plates were, there was a considerable amount of mail addressed to Noland Nielsen. He is one of the defendants in this case.

There were tracks leading from the cabin to the river that had a peculiar twist in them like they were made by a person carrying additional weight on one side of the body. I have had a great deal

(Testimony of Mark White Croxall.)
of training in observing footprints under [39]
different conditions.

I do not think that in a direct line it would be over 600 yards from the still to the cabin. I could not see the faces of any of the men who ran away, but they were both large men, similar in size to the defendants Nielsen.

Cross-examination.

(By Mr. WOODS.)

I couldn't say whether the map you show me is a fair representation of the Rainier National Forest or not. I think it is about six miles from Ashford to the Park.

(Whereupon, at the request of Mr. Woods, witness drew a map, marked Defendants' Exhibit No. "A-2," which was admitted in evidence.)

WITNESS.—(Continuing.) There are many cars travelling back and forth on the highway. I know there are a large number. I have seen many machines along in that neighborhood. There are a number of houses and cabins occupied by various people in that neighborhood. I think there have been a number of arrests made there for violations of the prohibition law. I do not know how many.

It was about five or six hundred yards from the highway into the camp, and about six hundred yards from the bank of the Nisqually River from the still, the way we had to go. The trail twists around. There are trails all over the woods up in that country heading off from the old logging

(Testimony of Mark White Croxall.)

camp; some run up the river and some run down the river and some of them run diagonally across.

I have marked on the map an "S," which is approximately where the still was located. This is on Defendants' Exhibit No. 1.

Assuming that the map is correct, the still would be about two miles southwest of the park. [40]

I have heard of other arrests being made up in that locality.

There are ten or twelve buildings in this old logging camp. I was there probably three weeks or a month before the 18th of May with Morbacher, Casper and Bodaylea. None of the defendants were there at that time. There was a fellow there named White. I made a complaint against Noland Nelson in this case. Later on this case was dismissed against him by the District Attorney. I was consulted at the time.

I got within twenty-five or thirty yards of the still when I heard somebody say "Look out!" Two large men ran to the left. I never saw their faces. I heard a noise like somebody running to the right, so I took after the two fellows. I fired two shots one into the ground and one into the air. I ordered them to halt. I spent about half an hour trying to find them. Then I came back to the still and found Deputy Sheriffs Jeffreys and Bodaylea. The two fellows went to the left up the trail and into the brush up Big Creek about 50 or 75 yards away.

At the still there were two vats. We burned

(Testimony of Mark White Croxall.)

everything there. That is a wooded country. The men who ran up the stream appeared to wear working clothes.

We left Tacoma that morning about eight or eight-thirty and made two or three investigations on the way down and got back in the evening.

We entered Nelson's house.

Q. Did you have a warrant for that?

Mr. GORDON.—Objected to as immaterial.

The COURT.—Objection sustained.

Mr. WOODS.—Exception. [41]

WITNESS.—(Continuing.) The bottle of whiskey was found in Nelson's cabin on the bed.

Cross-examination.

(By Mr. WRIGHT.)

These two men who were pursued by me ran up Big Creek. I think Big Creek runs into the Nisqually River below that point. I imagine that would be in the general direction of the Park. I did not see the other man, and I can give no information as to what he looked like. I tried to track the men who ran upstream, but I lost their tracks.

The cabin I have referred to is the Reece cabin and is the cabin in which I found the driver's license issued to James Reece. I never saw Reece there on any occasion.

The back seat of the Ford I found in the Nelson, not in the Reece cabin.

(Testimony of Mark White Croxall.)

Redirect Examination.

(By Mr. GORDON.)

I could not say, I would not say that there was any similarity between the still we found when we arrested Dave Nielsen two years ago and the still we found on this occasion. The lint I found on the carpet on the car was burlap lint. [42]

TESTIMONY OF NOLAND A. NELSON, FOR
THE GOVERNMENT.

NOLAND NELSON, a witness on behalf of the Government, being first duly sworn, testified as follows:

My name is Noland A. Nelson. I live above Ashford. I live in the second house to the right going in at the Anderson-Hall logging camp. It is one of the buildings constituting the old camp. I started living there about the middle of April, 1926, with Mr. White. I was one of the defendants to this case until the case was dismissed as to me this morning. Until the 7th of April and up to the 2d of May I was driving truck for the Government at White River Entrance, about 104 miles from Ashford. From the time I went to live there in April up to the 2d of May, I was at the Anderson-Hall Camp every night. After the 2d of May, I was more than 100 miles away and did not return until the 22d of May. I found that in my absence other persons had been using my cabin, and on the 22d of May the shack had been tore up. The bed was tore up and my belongings were lying

(Testimony of Noland A. Nelson.)

all over the floor. Letters, etc., were scattered all over the floor. I didn't miss anything, though.

Prior to the 2d of May, I never saw Dave Nielsen, but I had seen Charlie Nielsen and James Reece twice at the Anderson-Hall Logging Camp. I cannot give the exact dates, but it was between April 17th and May 2d. I do not know what they were doing, and know nothing about it except that I came home one night about ten thirty and left the next morning at four or four-thirty. I seen them that night when I came in. I didn't talk to them. They were standing in the road about fifty feet from my cabin. I do not know how they came there or anything about it. This may have [43] been five to seven in the evening. I did not see them have anything in their possession, and didn't see them cross the river.

Calling my attention to Government's Exhibit No. 3, I will say I never saw it before. I had no liquor in my cabin on the 18th of May, and there was none there when I left on the 2d of May.

Cross-examination.

(By Mr. WOODS.)

Mr. Croxall came to me before this case was dismissed against me, yesterday. He didn't exactly promise me that he would have the case dismissed, but he gave me to understand that it would be dismissed, providing I would testify to what I knew about that place.

There are many trails leading out from this camp. I do not know how many or where they

(Testimony of Noland A. Nelson.)

lead. I do not know how far my cabin is from the Nisqually River. I would say that it is about 500 yards from the Mountain Road.

There are a number of houses at this camp, some of them are in fairly good shape. I would not attempt to give the date that I went there to live.

Redirect Examination.

(By Mr. GORDON.)

No other representing the prosecution suggested to me what my testimony should be, except that I was expected to tell the truth, and I have told all I know about this case. [44]

TESTIMONY OF JOHN G. BODAYLEA, FOR
THE GOVERNMENT.

JOHN G. BODAYLEA, a witness called on behalf of the Government, being first duly sworn, testified as follows:

My name is John G. Bodaylea. I am and was during the month of April, 1926, deputy sheriff for Pierce County. On the 18th of May, 1926, I accompanied Major Croxall, Prohibition Agent Lambert, Deputy Sheriff Morbacher and Deputy Sheriff Jeffreys to the Anderson-Hall abandoned logging camp near Ashford, Lewis County.

Mr. Jeffreys is east of the mountains. He left about a week ago. He is out of the city on his vacation. As far as I know he will be back in about another week.

(Testimony of John G. Bodaylea.)

On reaching the camp, Mr. Morbacher, Major Croxall, Lambert, Jeffreys and myself got out. We drove up there that morning from Tacoma. It is about 50 miles. We did not find anything at first. When we arrived at the logging camp, Major Croxall and Mr. Jeffreys started out across the river. I was probably two or three minutes behind, when I got there they were in the possession of a still. It was probably a quarter of a mile from the cabin. I did not pay any attention, but I didn't observe any fresh footprints, excepting those which had been made by the officers ahead of me. I heard two shots fired. On reaching the still I found four sacks of sugar. They bore the print "Sea Island Company, sugar." I made an examination of this sugar. The sugar which you show me marked Government's Exhibit 1 has the same appearance as the sugar I found there. We found two vats of mash, approximately 1,500 gallons. One of them, I would say, was ready to run. This particular sugar which I found had not been used in the mash, but the sacks were open. I could not tell what kind of [45] sugar was in the vat. There was also a sack of meal there. I would say that the mash was sufficiently fermented so that it contained some alcoholic content. I did not test it or taste it, but would say that it was working.

There was a small 5-gallon keg. I tasted the contents and would say that it was whiskey containing more than one-half of one per cent alcohol.

(Testimony of John G. Bodaylea.)

The still and the mash were right across from one another. Not more than ten or fifteen feet apart. They were destroyed.

On return to camp we searched the cabins around there. I was not present when the whiskey was found. I believe Mr. Lambert found it. I observed cooking utensils, clothing and such like, in one of the cabins. In the garage was two cars, and in another garage was another car. There was three cars on the premises. I do not think there was anything on the cars themselves to indicate to whom they belonged.

There were also provisions in the cabins. It looked like some one was living there. There was clothing, eatables, food and fishing rods, and I believe some firearms. There was also a fishing basket containing some new corks about an inch in diameter. The basket was a large sized creel and it was about one-third full of corks.

I saw Mr. Morbacher bring in his sack of copper clippings. It was copper just like the still. Those you show me are the ones Mr. Morbacher had.

Cross-examination.

(By Mr. WOODS.)

We had made arrests up there for the violation of the liquor law several years back. We arrested a man named Murray and another man named Gerber, and searched the roadhouse up there. All of these places would be within seven or [46] eight miles of this place. This old mill is about

(Testimony of John G. Bodaylea.)

two miles, I should say, from the entrance to the Park.

The map you show me, being Defendants' Exhibit No. 1, is a fair representation of the Park in that locality.

(Whereupon the map was admitted in evidence and marked Defendants' Exhibit A-1.)

WITNESS.—(Continuing.) I would say it was a quarter of a mile from this old camp to where the still was found. I do not think it was a mile and one-half. I do not know just how far it would be from there to the Gerber place. The Murray place is up by Ashford and the roadhouse we searched just this side of the Park entrance. I can't recall the name, there are several places up in that country where they make moonshine. There are a number of fishermen who come there to fish. There is a pretty good road in there leading right to that camp from the highway. There is a pretty fair path from the camp down to the river. There are several trails around there. They run in all directions.

I would say that the place where these copper clippings were found is perhaps a mile from where the still was, if the map is correct. There are woods all around there, grass, bushes, and underbrush. I could not say that there was any trail out to the copper or not. There is much traffic going by this locality all the year round. I think fishermen fish all the way from Ashford up to the Park entrance, and there is much camping around in that locality.

(Testimony of John G. Bodaylea.)

Cross-examination.

(By Mr. WRIGHT.)

There is a trail going up from this abandoned logging camp, which follows the north or the left-hand side of the Nisqually River. I do not know whether it continues on down [47] the river or not. I followed it about as far as Elliott Lodge one day. I have had considerable experience with mash, and I would say that this mash was ready to run, or nearly so. I couldn't say exactly how long it had been set. Some mash works faster than others. It usually takes from three to ten days.

The first cabin entered was the first one on the right, then the second and so on following. I was in four of them. I was also in the garage and barn. There was no one present while I was there. I remember seeing seat to an automobile, but I do not remember which one. I think it was in the second cabin, I am not sure. [48]

TESTIMONY OF THEODORE MORBACHER,
FOR THE GOVERNMENT.

THEODORE MORBACHER, a witness on behalf of the Government, being first duly sworn, testified as follows:

My name is Theodore Morbacher. I am a deputy sheriff for Pierce County, and was such in the month of May, 1926. I accompanied Major Croxall, Deputy Sheriff Bodaylea and others on the trip to the Anderson-Hall Logging Company Camp. That is in Pierce County, Washington. The Nis-

(Testimony of Theodore Morbacher.)

qually River is the boundary line between Pierce and Lewis counties. At that place, and across the river from where the cabins were would be Lewis County. The camp would be on the Pierce County side or the north side.

When we arrived at the camp we first looked over the property and found there were two automobiles in the garage, a Buick and a new Ford. In the barn there was a Chevrolet roadster. I can't give the license number of the cars. I took them down and looked them up when I came into the office to see who they belonged to. I have not the numbers with me. I have two of them in my mind. The car which was in the barn, the Chevrolet, was No. 111206. The other was a temporary license number. The last two numbers of it were 93. The large Buick was No. 111205. I can't remember the first two numbers of the temporary license. I have seen Dave Nielsen drive the large Buick. The Buick and the Ford had the rear seats out of them, and there was some light-colored corn meal in the bottom of the new Ford. It was quite white, but I did not pay much attention to the Buick and the other one.

Lambert and I stayed at the shack while the others went across the river. I had not been feeling well, so I did not hit the trail. We searched around to see what we could find. [49] We did not find any booze. I had also been in the Nielsen and Reece shack, the first one to the right coming in. The front door was open, but the boys had

(Testimony of Theodore Morbacher.)

been in before me. I looked around in there and then went around to the rear. We found the bag with the copper clippings there. At that time they were in the sack that is marked Exhibit 2. It was about 125 feet directly back of the shack in the brush. We also found several empty bottles stuck in the dump. They did not contain any liquor. I found one sack of beer bottles hid away under a log.

Just about then I heard a couple of shots fired. They sounded toward the southwest, toward the river. I came back to the shack about fifteen minutes after these shots were fired. As I got on the porch a dog commenced to bark. He was under the bed. I hadn't seen any dog in there before. The lock was broken on the door and it couldn't be shut but what a dog could easily push it open. He was a kind of a gray brindle dog, and looked as though he had some bull in him. I am not much of a dog fancier, so I do not know what breed he was. The dog was quite wet.

On the wall of this cabin there were Reece's clothes with his driver's license in the pocket. Near the foot of the bed I found some clothes and went through the pockets and found an envelope addressed to Charles Nielsen. It bore a stamp and postmark. There were clothes, boots, shoes, etc. There was corn meal and sugar there, but I paid no attention to it. I do not know whether the sugar was large granules, or small.

I showed the copper clippings to Major Croxall,

(Testimony of Theodore Morbacher.)

and in fact took him back to show them to him before moving them.

I then entered the Nielsen cabin next door. [50]

Cross-examination.

(By Mr. WOODS.)

The dog was a middle-sized dog, about sixteen inches high, I should say. Kind of a brindle dog. I heard the shots very plainly. I did not go to the still. The trail from the garage to the river was a well-defined trail. There were also other trails leading from the barn. This camp is about one-half to three-quarters of a mile off the highway.

The first time we went up there this man White was living there. That was a couple of weeks earlier. There is a pretty good road into the camp, not graded.

We have searched Elliott Lodge once near there. Also the Alpine Lodge, and we also searched Twin Maples. I have searched Fisher's several times. Those are all the arrests that I have made there. We had also found a little still at Fisher's. It was a small affair. These places are all in that vicinity. I do not remember in what cabin I saw the rear seat to the automobile.

Cross-examination.

(By Mr. WRIGHT.)

I noticed a little cornmeal in the bottom of the Ford. I think the dog was still there when we left. I never saw any liquor around the place at all.

(Testimony of Theodore Morbacher.)

Redirect Examination.

(By Mr. GORDON.)

The dog ran out of the cabin when I opened the door, and went out and stayed around after that. I didn't see him when I first went to the place. I would say it was fifteen or twenty minutes after I heard the shots, when I first saw the dog. Later I saw the smoke of the burning still very distinctly. It was long before that that I first saw the dog. [51]

TESTIMONY OF RICHARD A. LAMBERT,
FOR THE GOVERNMENT.

RICHARD A. LAMBERT, a witness on behalf of the Government, being first duly sworn, testified as follows:

My name is Richard A. Lambert. I am a Federal prohibition agent stationed at Tacoma, and was such in May, 1926. I accompanied the other officers to the camp described. Croxall, Morbacher, Bodaylea, Jeffrey and myself were there. The place fronts on the Nisqually River. There are ten or twelve houses and a garage and barn. Four or five of these houses are occupied, if I remember correctly, by different people. Who they are, I do not know.

In the garage were two automobiles. One a Buick and one a Ford. In the back of one was a little cornmeal. In the barn was a Chevrolet roadster. If I remember correctly, there was a little cornmeal in the back of that automobile. Also a little

(Testimony of Richard A. Lambert.)

sugar sack in the back, being used for something. It was marked "Sea Island Sugar."

Two trails lead down toward the river. There were three distinctly well-defined trails that lead from the Anderson-Hall Camp. One of them going directly back to the road. It is an old established place. These trails have been cut down three years ago or more, or whenever they were working in the timber business, but the best trail leads to the river.

Morbacher and I stayed at the camp. I heard the shots fired. I saw the smoke while the still was being destroyed. I stayed at the shacks. We searched the cabins. In the first cabin there was a cooking stove, table, cooking utensils, bedding, clothing and a driver's license issued to Reece. Some fishing outfit, some hooks, lines, poles and a fishing basket. The fishing basket was about one-third full of No. [52] 10 corks. Those corks will fit a five-gallon jug or a five-gallon keg. I believe they were new. I saw some of this Sea Island sugar similar to Government's Exhibit No. 1. Croxall brought back a sack of similar sugar. It looked the same.

I have been a prohibition agent going on three years, and have located about 100 stills. I never saw any sugar similar to this used for the manufacture of mash. I saw a brindle pit bulldog. He was wet when I first saw him.

On the Ford car was temporary license plate No. 5683, the Buick was 111205, and the Chev-

(Testimony of Richard A. Lambert.)

rolet No. 111206. There was a small quantity of white cornmeal in two of the cars. The rear seats had been removed from the Buick and the Ford. The Ford seat was in one of the cabins.

In the second cabin to the right, underneath the pillows, we found a quart bottle with a little bit of liquor in it, maybe a teaspoonful. In a pasteboard box were some personal effects of Noland Nelson. There was also a pint bottle about one-third full of moonshine whiskey. I saw no other liquor in the place. The flask you show me is similar in appearance to the one I found.

Cross-examination.

(By Mr. WOODS.)

I couldn't say who occupied the cabin where the whiskey was found. I couldn't say whether fermentation bleaches cornmeal or not. I saw no sugar in any of the machines. I looked for it, and if there had been any, I think I would have seen it. In the cabin there was some sugar.

The Ford seat was in the middle of one of the cabins, I do not remember which one.

Cross-examination.

(By Mr. WRIGHT.)

The pasteboard box in which I found the whiskey was out in the center of the floor. It was the only whiskey I found, [53] except the quart bottle with a very small amount. The quart bottle was under the pillow.

(Testimony of Richard A. Lambert.)

We entered all of the cabins of the camp, and found nobody in them.

Redirect Examination.

(By Mr. GORDON.)

The Government's Exhibit No. 3 is similar to the flask I found. Government's Exhibit No. 1 is similar to the sugar I found. [54]

TESTIMONY OF CHARLES R. MAYBURY, FOR THE GOVERNMENT.

CHARLES R. MAYBURY, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

My name is Charles R. Maybury. I am Director of Licenses for the State of Washington, and reside at Olympia. I am in charge of the issuance of automobile licenses in this state.

The motor applicant goes to the county auditor and makes his application to him, pays the fee to the county auditor; the county auditor then issues a temporary number to be used until such time as the application can be forwarded to Olympia and the plates shipped from my office. The application is supposed to be signed by the applicant. We receive the original application, the auditor retaining a copy. Temporary license plates bear a serial number of the county. I have here application of Charles Nielsen for a 1926 license for an automobile. The Government's Exhibit No. 4 for identification is a copy certified by myself under

(Testimony of Charles R. Maybury.)

seal of my office of the original application which I have. The original applications are state records and a part of my office. The state's license number was 111206. That was for a Dodge coupe. The address is given as Route 1, Box 180, Eatonville. For David Nielsen the state license is No. 111205, covering a 1924 Buick car. His address is given as Route 1, Graham, Washington. For James Reece the auditor's application card is No. 5683. That is the temporary license that was for a Ford, 1926, touring.

(Whereupon the certified copies of the application were offered in evidence, admitted and marked Government's Exhibits 4, 5 and 6.) [55]

TESTIMONY OF R. L. UHLMAN, FOR THE GOVERNMENT.

R. L. UHLMAN, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

My name is R. L. Uhlman. I am deputy county auditor for Pierce County, and have been so for about six years. I have custody of the automobile license application made by James Reece, which was made May 15th, 1926, temporary card was No. 5683. It covers a 1926 Ford touring car, and is signed J. E. Reece. I did not personally witness the signature. The address is given as 3714 South Ainsworth.

(Testimony of R. L. Uhlman.)

Cross-examination.

(By Mr. WRIGHT.)

There is no way of telling from this record what time of the day this license was applied for.

(Whereupon the prosecution was permitted to withdraw the original exhibits and substitute certified copies thereof.) [56]

TESTIMONY OF MARK Y. CROXALL, FOR
THE GOVERNMENT (RECALLED).

MARK Y. CROXALL, recalled as a witness on behalf of the prosecution, testified as follows:

I desire at this time to correct my testimony. I said the Ford temporary license was No. 5693. I had my memorandum with me and I made inquiry at the auditor's office at one time. In copying that memorandum I made an error, although my original notes were correct. From my memorandum my official case report was sent in. The original memorandum was correct, but the report was not. Since then the original memorandum has been destroyed. We usually do when we send in the case report.

For the purpose of refreshing my mind before testifying I referred to the case report which reads 5693. Since then I have checked and find that I was in error. [57]

TESTIMONY OF PAUL H. JEFFREY, FOR
THE GOVERNMENT.

PAUL H. JEFFREY, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

My name is Paul H. Jeffrey. I am, and was in the month of May, 1926, a deputy sheriff for Pierce County, Washington. I accompanied the other officers who have been named to the Anderson-Hall Logging Camp. I saw the cars parked in the garage and remember the license number of those cars. They were: Chevrolet, 111206; Buick, 111205; Temporary Ford, 5683.

I was absent from Tacoma last Friday while this case was being tried. The back seats of the of two of the cars were missing. There was some white cornmeal scattered on the floor of the Buick and the Ford automobile.

Croxall and I followed the trail across the river and to the still. When we were about 150 feet from the still Croxall hollered "Halt" and fired a couple of shots in the air. I just saw the back of a man go through the brush. I wouldn't attempt to identify him. I heard a voice say "Look out!"

We found a big still and two vats. One had just been emptied and the other was full of mash. There was a complete equipment of a still there, a pump and some kegs, three or four sacks of sugar, white granulated, like the sugar you show me.

(Testimony of Paul H. Jeffrey.)

There was about a thousand gallons of mash there at the still, and considerable white cornmeal scattered around. There was some on top of the vat where whoever had emptied the sacks of cornmeal into the vat,—it had kind of trailed. The vat was made of two-inch planks, and there was considerable [58] cornmeal on top of it. I have been a deputy sheriff since 1921.

I have had occasion to examine the process of fermentation. I would say that yellow cornmeal would not bleach white. The cornmeal I saw in the automobiles resembled the cornmeal I saw at the still. There were two or three ten-gallon kegs, and I believe fifty-gallon barrels. The mash I saw had just been set.

The only liquor there was at the still was what there was at the bottom of the kegs. I do not suppose there was over a pint or so. The still and the mash were destroyed.

I saw a little dog at the still. I saw him again when I returned to the cabin where Morbacher and Lambert were. He stayed around the cabin while we were there. The dog was wet when we came back from the still and found him at the shack.

At the shack there was considerable clothing, a gun, fishing tackle, a fish basket full of corks, three or four gallon jugs, glass jugs which had contained liquor; groceries and eatables; some clothing hanging on the wall; a watch and chain; an Eagle charm in one of the vest pockets, and the charm had the initials on it. The first one was

(Testimony of Paul H. Jeffrey.)

“C” and the last one “N.” I am not sure about the middle one. It was an Eagle charm. There was a rifle there also.

There were tracks leading from the cars down to the river bank. We followed them to the still. There was nearly half a sack of sugar at the cabin. Government’s Exhibit No. 1 is the same kind of sugar that was in the sack and at the still. It is coarser sugar than ordinary granulated sugar. There were three or four sacks at the still. [59]

In the first cabin the only sign of liquor was the three or four gallon jugs, which had contained it. That is the drainings in the bottom, perhaps a teaspoonful in each jug.

Also in the cabin was a letter, but I do not remember who it was addressed to. Referring to the corks in the basket, it was an ordinary wicker fish basket, probably 14 or 15 inches long, and 8 inches wide, 9 or 10 inches high. It was about two-thirds full of corks of uniform size. New corks. They would fit a gallon jug. I would say there were between 150 and 200.

In the next cabin we found a quart bottle under the pillow in the bed. Lambert found a pint bottle partly full of liquor in a box. Government’s Exhibit No. 3 is the same in appearance as the bottle found. This pint bottle was in a pasteboard box that had some clothing and other things in it. This bottle was down at the bottom. The box was about in the center of the room on the floor.

I saw a sack full of copper clippings after we

(Testimony of Paul H. Jeffrey.)

came back from the still. They were similar to Government's Exhibit No. 2.

Cross-examination.

(By Mr. WOODS.)

I didn't see but one trail. I couldn't tell, there may have been others. I was about five or six feet behind Croxall when he shouted. I was probably 150 feet from the man who was running. Probably 125 feet from the still, when Croxall fired. We had not seen the still. Croxall followed them and was gone perhaps twenty minutes. I could not say whether the dog was there when Croxall got there or not.

Cross-examination.

(By Mr. WHITE.)

I think we arrived at camp about ten or eleven in the [60] morning. It is about 50 miles from Tacoma. We left town about eight. I would say that from the camp to the still the way we went was probably three-eighths of a mile. In a straight line it would not have been over 300 yards. I was joined at the still by Boday-lea. There were a couple of axes there and we proceeded to break up the stuff. We had to chop the vats, and that takes time. I would not say that the mash was in a state of fermentation. In my opinion it had been set that morning. The other vat had been run off. I know that yellow cornmeal will not turn white by fermentation.

(Testimony of Paul H. Jeffrey.)

I think we entered four cabins after we went back to the camp. One, I think, belonged to a ranger. He is the man referred to as Mr. White. Then there was the Noland Nelson cabin and then there was the first cabin I spoke of and then there was another one not far from there—I believe we entered five cabins. They all had the appearance of being occupied. I couldn't say whether the cabins were locked or not.

These copper clippings were in the cabin when I saw them. I do not know how they got there.

(Whereupon Exhibits No. 1, 2 and 3 were offered in evidence.)

Whereupon the defendant Reece objected upon the ground that they were too remote, and the defendant Nielsen also objected to the admission of the exhibits. The objection of each was overruled, and exception allowed to each defendant.

(Whereupon the Government rested.) [61]

Whereupon the defendants Nielsens moved the Court for a directed verdict of not guilty in favor of the defendants Dave Nielsen and Charles Nielsen.

Whereupon the defendant Reece moved the Court to strike the testimony of Mark Y. Croxall, and to withdraw it from the consideration of the jury on behalf of the defendant Reece, which testimony related to the arrest and plea of guilty of Dave Nielsen more than two years ago, or about two years ago, for the manufacture and possession of intoxicating liquor.

Thereupon the defendants Nielsen joined in the motion to strike that testimony and remove it from the consideration of the jury.

Thereupon the Court denied the motion for the instructed verdict on behalf of defendants Nielsens, and denied the motion to strike and remove from the consideration of the jury the testimony of the witness Croxall with reference to the arrest and plea in the former case; and refused to further instruct the jury thereon. To all of which rulings by the Court the defendants, and each of them, excepted, and exceptions were by the Court allowed.

Thereupon the defendant Reece moved the Court for a dismissal of the indictment and for a directed verdict on the ground that the indictment did not charge any crime under any statute or law of the United States, and challenged the sufficiency of the evidence to support any verdict of guilty against the defendant Reece upon the indictment; and asked the Court for a directed verdict and a dismissal of the indictment at the hands of the Court.
[62]

Whereupon the Court ruled:

“The motions of both defendants for an instructed verdict denied, and the motion of the last defendant for a dismissal denied.”

Whereupon all defendants excepted to the rulings of the Court, and exceptions allowed.

Whereupon the Court instructed the jury as follows:

(Testimony of Charles Nielsen.)

“Gentlemen of the Jury, the Court’s ruling is to the effect that the Court holds that the questions in the case are questions of fact for the jury to decide and not questions of law for the Court to decide.”

Thereupon, to sustain the issues of the several defendants on their behalf, the defendants and each of them, introduced the following testimony:

TESTIMONY OF CHARLES NIELSEN, FOR DEFENDANTS.

CHARLES NIELSEN, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is Charles Nielsen. I am one of the defendants in this case. I was never arrested. I voluntarily appeared after this case had been on trial a day and one-half and put up bond. My father’s name is Pete Nielsen. He is 81 years old. My mother is over 60. Where I live they call it Eatonville, but it is this side of Eatonville about twelve miles. I have been a farmer by occupation all my life.

On the 18th of May, last, I was up at the old cabin, the first cabin on the right-hand side of the road. I was not in any other cabins. My automobile was in an old barn. I had been there twice before this year. [63]

I was up the river fishing. We started for Saw Tooth Lakes, but we could not find them, so we

(Testimony of Charles Nielsen.)

came back and went up the river fishing. My brother Dave, another defendant in this case, was with me. We got back from this old homestead close to twelve o'clock, I judge. I do not know anything about any marks of whiskey kegs in my brother's car. He has no water at his place and he hauls it to the place in milk cans in the same car that he had up there—his Buick. He has been doing that for a matter of three or four months. He sets the milk cans full of water in the back of his car. They make a ring, of course, where the water spills around the bottoms of the cans.

During the months of April and May Dave's wife and family had been sick and were for a time in the hospital. I couldn't say just what the date was when they were in the hospital. On the day we went to the camp Dave had his brother-in-law come out and take care of his place while he was away.

As to there being evidence of cornmeal in the back of my car, all I know about that is that I hauled the groceries for my folks for the past three or four months—groceries and feed. I think that there was a small sack of cornmeal among them. I am not sure whether there was or not. My car is in just the same condition now that it always was.

Cross-examination.

(By Mr. WRIGHT.)

I am acquainted with James Reece. I went up to the mill the day before the 18th, that would be

(Testimony of Charles Nielsen.)

the 17th, in the afternoon. I went in my own car and no one went with me. I went up there to go fishing. I was to meet Reece, who was to take us up to Saw Tooth Lakes. We didn't know the country and didn't know the trail. I had met Reece in Tacoma on Sunday [64] and he told me he was going to cruise a piece of timber for his father and he said maybe he would have time after doing his cruising. I left home about three o'clock. I stayed in the cabin that night. That is the first cabin on the right-hand side as you go in. Reece stayed there with me. Besides our things there were a lot of old clothes and rubbish, some cooking utensils. We didn't disturb anything. We had that camp through the kindness of Mr. White, and we appreciated the fact. So we didn't nose around in anything at all. There were some old shoes, a coat, and some old clothes, as near as I could say.

Reece and I slept in a double bed. My brother Dave Nielsen came in Tuesday morning. He wasn't there on Monday night at all. On Tuesday Reece did not accompany my brother and I. He didn't get done with his job. We left together in the morning around eight o'clock. We didn't see Reece again during the day. I saw him in the evening after we came in, about five-thirty or six o'clock. I got to the cabin shortly before he did. I saw no officers that day and I heard no shots fired.

(Testimony of Charles Nielsen.)

Calling my attention to the dog, I think I have seen that dog around the camp. I had seen it once before around camp. It is a tramp dog. We fed it. At least, we took it to be a tramp dog. It was not my dog and it was not Reece's dog.

Calling my attention to my brother Dave having trouble, I remember that incident well. That was about four years ago, a little over three and one-half years ago.

Mr. WOODS.—We object to that and move that the answer be stricken.

Q. How long ago, if you know, was it this trouble occurred that your brother Dave was in? [65]

Mr. WOOD.—I object to that.

Mr. GORDON.—I object to that.

The COURT.—He has answered that. Objection overruled.

Mr. WOOD.—Note an exception on behalf of the defendants Nielsen.

The COURT.—Allowed.

WITNESS.—(Continuing.) Reece was not charged in connection that that case at all.

Cross-examination.

(By Mr. GORDON.)

I saw no one at the camp on Monday afternoon but Mr. Reece. I didn't see Mr. White there.

The first time we occupied that cabin was the 3d Sunday of April. We came up the night before. Reece and I came up that time for the purpose of going fishing. I do not remember who

(Testimony of Charles Nielsen.)

proposed the trip, but we had been fishing before a number of times this year and the year before.

I have known Reece about three years. I couldn't say how many times I have been fishing with him. I never saw this still and do not recall ever having crossed the river at the point where it was said to be. When we went to the river we went from the cabin and waded up the river about three-quarters of a mile.

We left camp about eight o'clock in the morning. Reece was not with us. I think he left camp after we left. He directed us to the lakes, but we didn't get to the lakes. We went to the river and took a trail to the south, an old skid-road trail. We got up to an old clearing there. There was no trail we could follow, the trail was indistinct, we couldn't find it. It was on the third Sunday of April that Reece and I went fishing up there. Along about the first of May we went fishing [66] again. We drove up early in the morning and came back at night. Stayed the biggest part of the day. I do not know whether I saw Noland Nelson at that time or not. I saw somebody, but it was late in the evening. I rather think it was Noland Nelson. but I didn't speak to him. I do not remember seeing him there on any other occasion. On the first occasion we were there I saw Mr. White. I think that was on the occasion of the first trip. I saw a dog around there on that occasion similar in description to the dog the officers have described. I didn't say that I made friends with the dog, but

(Testimony of Charles Nielsen.)

as a rule I pet a dog and if possible feed him, and think I did so then.

Dave came up the following morning, that is, the 18th.

My name is Nielsen. I occasionally spell it Nelson. I made the application for my automobile license as well as for my brother Dave. I rather think I spelled his name Nielsen and my own Nelson, and I live at Route 1, Box 180.

The car I had up there on the 18th was a Chevrolet roadster bearing license No. 111206. It is not the license issued for the car. My application was for a Dodge Coupe and I received my license for the Dodge coupe. I later placed it on a Chevrolet coupe without the formality of making a transfer for the reason that the license for the Dodge car costs more than the license for the Chevrolet, and I believed I was entirely within my rights in transferring to the cheaper car. There was no idea of concealing the identity of the car.

Redirect Examination.

(By Mr. WOODS.)

Calling my attention to this sack of copper clippings, I know nothing about it and never saw it before. [67]

TESTIMONY OF D. M. WOOD, FOR DEFENDANTS.

D. M. WOOD, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

My name is D. M. Wood. I am no relation to the attorney in this case. I am a chemist by profession and have an office in the Provident Building in Tacoma. I have had no experience in fermenting liquor. Cornmeal, whether fermented or not, will be white even if made from yellow corn if it is put through the refining process. That is, prepared for table use. In that event, the husk is blown away leaving the meal white.

Cross-examination.

(By. Mr. GORDON.)

Neither the boiling nor the fermenting would have any effect on the color, nor would the exposure to the atmosphere. [68]

TESTIMONY OF HARRY FORD, FOR DEFENDANTS.

HARRY FORD, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is Harry Ford. I live at Graham close to the Dave Nielsen place and have lived there a little over a year. I was there in April and May of this year. I know that Dave had no well on his

(Testimony of Harry Ford.)

place and was obliged to haul water for his household use. He hauled it in the back of his automobile in milk cans, which were set on the floor in his automobile. This he had done for a matter of some months.

During the month of April his wife was quite sick. She was in the hospital and later the baby was in the hospital. Dave was doing all of the work, that is, both the farm work and the household work for a matter of a month or two. I could not be sure of the exact date. It was either in April or May they were in the hospital, but I saw Dave practically every day at the farm. He had quite a lot of work to do on the farm—fencing and building a house. He was there practically all of the time. He was around seventy acres in his farm and made the fence posts, himself. I don't believe he had any assistance. He put in the crop, hauled the water, built the fences, took care of the house, and was there practically all of the time.

Cross-examination.

(By Mr. GORDON.)

I do not know the distance from Graham to Ashford. Dave usually hauled the water to his house either from his brother's or from the store. That would be about a quarter of a mile away. I couldn't say just when his baby was in the hospital. I couldn't fix the date. I know for a fact that Dave Nielsen planted his crops, fenced his farm, cleared [69] land around the house and built a house besides doing all of the household work.

TESTIMONY OF S. W. AUSTIN, FOR DEFENDANTS.

S. W. AUSTIN, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is S. W. Austin. I am a merchant. I know the defendant Dave Nielsen and have known him for three and one-half years. I know his place. I have noticed it when I have been going by. I have noticed the amount of work that he has been doing. I have passed his place practically every day. In the early part of the spring, his place was not finished. He started to fence in the spring-time. He did all of the work himself. He made the posts of cedar, cut them, split them—was doing it when I went by his place. He built a house in the spring. I could not say exactly when he completed it. It was a double house, about six rooms. He had one or two men helping him on that.

During the months of April and May he had continual sickness in the family. He had no help in the house and did that work himself. I can't say exactly when his wife was in the hospital, but it was around the first part of May. The baby was born about the first part of April, somewhere around there. Then the baby was sick. I saw it in the hospital. That was at St. Joseph's Hospital in Tacoma.

I make deliveries around the route every day or so. I had occasion to observe these things. Dave

(Testimony of S. W. Austin.)

had no water on his place and was obliged to haul water for the household use. He had been coming up to my place and getting his water a great [70] deal of the time. He hauled it in the back of his Buick car in milk cans. I would say that the bottom of the milk can is similar in size and would make the same kind of a mark as a five-gallon whiskey keg. It would be pretty close to the same diameter.

I saw Dave on the 17th of April. He came to my store. He bought some groceries and some fishing tackle. I have my bills here with me. That was on the 17th of May.

Calling my attention to Defendants' Exhibit A-4 for identification, that is the bill of goods that I sold him on the 17th of May. The first thing on the list is two fish lines.

Q. Did you know about his going fishing?

A. Yes. When he was buying fishing tackle he made the remark that he was going fishing.

Mr. GORDON.—I object to what he said and ask the jury be instructed to disregard it.

The COURT.—Objection sustained. The jury will disregard what was said.

Mr. WOODS.—Exception.

The COURT.—Exception allowed.

(Whereupon the sales slip was received in evidence, marked Defendant's Exhibit No. A-4.)

WITNESS.—(Continuing.) During the time that Dave Nielsen was away on this trip on the 18th

(Testimony of S. W. Austin.)

he got his brother-in-law Duffy to stay with his family.

Cross-examination.

(By Mr. GORDON.)

My store is on the Kapowsin Road, slightly over a mile from Nielsen's place.

I remember Duffy coming up to my store while Dave was [71] away, telling me that he was staying at Dave's. Duffy told me that himself. I didn't see him at the place myself. I see Dave practically every day. I go past his place making deliveries practically every other day. Sometimes it might be three days between times, and sometimes every day. I didn't see him every time I went down there, but practically every time. When I went past there he was usually out working. It would be pretty hard to say how many times I made a delivery, but it was quite a few. Oftener than once a week.

On one occasion I went to town with Dave. That is when I saw the baby in the hospital. I would say that was about the 12th or 14th of May, probably.

I think Dave's farm is seventy acres. I saw him making the cedar posts from logs that he had hauled and split. I saw him splitting them. I didn't see him hauling the logs. He had a boy helping him once when I was there. At least, he appeared to be helping him. I couldn't say for sure. I saw him splitting posts, stretching the barb wire,

(Testimony of S. W. Austin.)

setting the posts, digging the holes, clearing the land, building a house, and the most I ever saw helping him was two men on his house. I couldn't say just how long it took to finish the house. He was working on *on* and off at that probably a month and one-half. Often I would stop and talk with him.

I have seen him haul water in the milk cans many times. From a casual observation only, I would say that the milk cans compare favorably with a five-gallon keg as to the size of the bottom. I never made an exact comparison, but I would say that they are very close.

I am not related to Dave Nielsen nor to any member of his family. [72]

TESTIMONY OF WILLIAM NIELSEN, FOR DEFENDANTS.

WILLIAM NIELSEN, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is William Nielsen. I live at Graham, Route 1, across the road from Dave. I know that Dave has been working on his place all spring. He started to build his house last fall, about December. He had two carpenters helping for a while. Then he was working at it alone. The carpenters were there three or four weeks, but it wasn't completed. He has been working there since himself. The house is now completed all but the papering and some

(Testimony of William Nielsen.)

painting yet to do. He has been doing most of it since himself. He had a boy helping him for a few days. David cut the posts. He got the cedar on the place that he made them from. He was at home during most of the month of April and May. I saw him nearly every day. I live right across the road about four hundred feet from him, and I can see him whenever he is out. I know that he has been home practically every day, except when his wife was in the hospital, when he may have been in Tacoma occasionally. She was sick. She was sick about the first part of April and afterwards too. David was doing the work and he had no one to help him. Then the baby was sick in the hospital.

There is no water on Dave's place. He hauls it most of the time from my place and from the store in milk cans in his car.

In the Nielsen family there are six brothers and two sisters. My father lives up in the neighborhood. He has lived in Pierce County for forty years. Charlie is staying with the old folks making his home there. [73]

Cross-examination.

(By Mr. GORDON.)

The house, as I remember, was started in November and he moved into it in about three weeks, when the carpenters quit. That is, he moved in a few days before Christmas. They had their Christmas dinner there, and a good deal of

(Testimony of William Nielsen.)

the building was done after that, but most of it was done before the first of February. That is, most of the outside. About March he had his fencing to do. He put in the crops in April. I know, because I sowed the oats for him myself. He did the harrowing and I sowed the oats. That would be about the 8th or 10th of April when his crops were all in. From the 10th of April to the middle of May he was leveling up around the place where he has his buildings. It was all rough and he had to make a road into his garage, and gravel it. He was working on that.

The baby was born about the first of May at the hospital. The mother was sick during her confinement and after she got back. She was quite sick. Later the baby was taken to the hospital, but taken back some time before the first of June.

TESTIMONY OF JOHN J. DUFFY, FOR DEFENDANTS.

JOHN J. DUFFY, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is John J. Duffy. I am a brother-in-law of Dave Nielsen. On the 17th day of May I was down at my brother-in-law's and at Dave Nielsen's place. I went over there to visit and he proposed a fishing trip. Me and my wife took care of the family while he was away. Dave's family was [74] sick during the month of April and on until

(Testimony of John J. Duffy.)

after the 18th of May. In fact, they are still sick. I was taking care of them while Dave was away. There was no woman hired around the place. I was not at Dave's place during the month of April at all. I was there on May the 18th. I was around there for a week end after that shortly. I was not there during the month of March.

Mrs. Nielsen is my sister-in-law, and I know about her being sick. I know that of my own knowledge. I live about eight miles from where she lives.

TESTIMONY OF A. B. WHITE, FOR DEFENDANTS.

A. B. WHITE, called as a witness on behalf of the defendants, testified as following, after being duly sworn:

My name is A. B. White. I live about three-quarters of a mile outside of the Park entrance, at the Old Mill. I would say it takes about thirty minutes to walk from Nisqually to Big Creek. It is probably a mile and a quarter by trail or a mile and one-half. Big Creek on the map is about one and one-quarter miles from where this old mill site is. The way you usually approach going through the woods is a large butte about 150 feet high that you hardly ever cross. I live in the office of the old mill and have lived there since December. I have charge of the place. There is only one place occupied at the present time. There are usually quite a number of campers there.

(Testimony of A. B. White.)

I wasn't present after the 12th of May until the 5th of June. I was working for the Government and was not there.

This camp is private property. There are quite a number of trails there, three or four. Some are not used. [75] There are some strangers there every week. Tourists and pleasure seekers. The houses are unfurnished. There are three cabins there at the present time unoccupied that have some dishes in them. The doors are kept unlocked. There is a mattress in the cabin that is described as the one Reece and Nielsen used. A mattress and a wooden home-made bedstead, an old cook-stove, and I think there was a heating stove; and on the stove there was an old teakettle and some frying pans and a few other cooking utensils. I never noticed in particular just what they are. There are not supposed to be groceries there, but there might be, I couldn't state.

Cross-examination.

(By Mr. WRIGHT.)

I am in the Government forest service and live at the place continuously from December until May. I was there when Noland Nelson was living there. I know about the time he came there. I think he was there about three weeks. No one was living with him. I never rented cabins to anyone.

These things I have described in the cabins have been there for several years. The cabin is occupied

(Testimony of Thomas B. Elliott.)

by the different parties that come in there and there have been a number of people, but not a great number, who have occupied them at different times.

TESTIMONY OF THOMAS B. ELLIOTT, FOR DEFENDANTS.

THOMAS B. ELLIOTT, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is Thomas B. Elliott. I live a quarter of a mile this side of the Park entrance on the Mountain Road.

I know the old Northwestern Mill. It is about a mile and a quarter from the Park entrance. There are about seven or [76] eight houses between it and the Park entrance. Nearly all of them are occupied the year around. There are four or five old mills between Ashford and the Park entrance. One of them is the Northwestern Lumber Company. I worked for them. Lots of fishermen go to that place during the months of April and May. Many people around there frequently just walk around and do not go fishing. Frequently people occupy the cabins.

Cross-examination.

(By Mr. GORDON.)

I have lived there for eighteen years and I never knew of an Anderson-Hall Mill. There is no such place. I run a summer resort there and a store just outside of the Park entrance. I think they mean, however, the old shingle-mill. That is the

(Testimony of James Reece.)

Scott & Anderson mill. It is on the bank of the Nisqually River.

TESTIMONY OF JAMES REECE, FOR DEFENDANTS.

JAMES REECE, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is James E. Reece. I am one of the defendants in the case. I am 27 years old and live at 2718 South Ainsworth in the City of Tacoma. I am married and have a family.

I am a compassman and timber cruiser by occupation and have been following that work since 1917. I am acquainted with Charles Nielsen and Dave Nielsen, but not well acquainted with Dave Nielsen personally, and have not been.

My father used to have Reece's camp up on the mountain.

In the middle of May this year I was at the abandoned [77] camp. I went there on the 16th of May. I remember the date because I bought a new car on the 15th of May.

I have here Defendants' Exhibit No. 5 for identification, that is my contract to purchase bearing that date.

After I got the car I bought some groceries to take to my home to my wife. I was going up on a job at this camp where I was to cruise some timber at the Metzler homestead. That is in Section 27

(Testimony of James Reece.)

about one mile west of the Park entrance. The southeast corner of 29 is about a quarter of a mile from the camp northwest. That is where I was going to work. I went up on the evening of the 16th. That was Sunday. I went alone. Charles Nielsen joined me there later. That was pursuant to an arrangement we had made. He wanted me to take him to Saw Tooth Lakes. I told him I was going to look at the timber and if I could get done in one day I would show them the way, but I did not get done; so I directed them. He came up on the next day, which was on Monday. Dave came on Tuesday morning.

On Monday I went over part of the timber and looked at my corners. I stayed in the first shack on the right. I had Mr. White's permission to occupy that camp and I had occupied it once before. That would be about the third week in April. Charles Nielsen was with me. We came in about ten o'clock on Saturday night. I do not know the day of the monty—somewhere between nine and ten o'clock. I went away the next evening. We were fishing while we were there.

To an extent, I know what the contents of the cabin were, but I never investigated. There was a bed, a coat, a couple of old skillets, but not much bedding. There were pots and pans, dishes and tins. We didn't take any cooking [78] utensils with us. They were already there. I took a couple of blankets and a quilt with me. There were some groceries there when I came there. I brought some

(Testimony of James Reece.)

from home with me. Naturally I brought them with me because I expected to be there a couple of days.

In cruising the timber I went away from the river. I spent practically all day cruising the timber. I did not see any officers up there either on Monday or Tuesday. I heard no shots fired.

On Tuesday morning the Nielsen boys left before I did. I left the cabin about eight o'clock. They had left some time before. I never saw Dave at all again. I saw Charlie about six o'clock in the evening. That was when I got back to the cabin. Dave was not there.

I have heard the testimony about where the still was discovered, and I would say that from the cabin that would be about three-quarters of a mile if you went south, but if you went by trail it would be from a mile and one-quarter to a mile and one-third. I do not know anything about this still, which the officers claimed to have found. I knew nothing about it and never saw it.

Calling my attention to Government's Exhibit No. 2, which is a sack of copper clippings, I never saw them before they were brought into court.

I occupied the first cabin to the right on the 15th, 16th and 17th of May. Noland Nelson had the second cabin. I was not in that cabin.

When the officers testified that the seat of my automobile was found in that cabin they are mistaken. I know it was in the first cabin because I took it there myself. [79] There were no chairs in the cabin and I took the seat in to sit on. I

(Testimony of James Reece.)

laid it across a couple of boxes. To an extent, I can tell you what the provisions consisted of. I brought fresh meat, groceries, and a sack of cornmeal mush, and I believe I bought some rice and a loaf of bread. I bought two loaves of bread—one to take with me and one to leave at home. It is quite possible that there was a hole in the sack of cornmeal that I bought, and I threw it on my seat cushion when I went home. I believe I noticed there was some cornmeal there, but I never paid any attention to it. The back part of my car is in the same condition that it was in May.

When I was up there fishing in the middle of May I saw Noland Nelson. It was in the evening of Sunday. I couldn't say just what time. I didn't talk to him. I saw Bob White up around there at that time. I had seen several different people fishing, but I didn't know them and didn't speak to them. I have heard the officers' description of the dog that was there and I have seen the dog there before. In fact, I have seen other dogs. I do not remember whether there was any dog there in the middle of April or not, but there may have been. The dog the officers have referred to was not my dog and was not brought there by either of the Nelson boys. That I know. I have a dog, but my dog is a collie.

It is eighteen miles across the park. It has been about six or seven years since I have been on the east side of the park.

(Testimony of James Reece.)

Calling my attention to the rifle, that was said to be in the cabin, that rifle belonged to me. I have had it for some time, and nearly always take it with me on my cruising [80] trips. I have been in the Noland Nelson cabins, but that was about three years ago. I have never been convicted of any crime.

Calling my attention to Dave Nielsen's arrest and plea some two or three years ago, I was not charged in connection with that and had nothing to do with it.

Mr. WOODS.—I wish to object to that question on behalf of Dave Nielsen, if your Honor please.

The COURT.—Overruled.

Mr. WOODS.—Exception.

The COURT.—Allowed.

WITNESS.—(Continuing.) I know nothing about the details of that transaction.

Cross-examination.

(By Mr. WOODS.)

They do not allow dogs in the park. I have examined the map to see how far it is from the old mill to Big Creek. Maps are my business. That is a Government map and I would say that according to the section lines it would be nearly a mile, by trail it would be close to a mile and one-half.

The Nisqually River is on one line of that section and Big Creek is a little over the line in the next section south. I never took my gun into the park.

(Testimony of James Reece.)

Cross-examination.

(By Mr. GORDON.)

I did not take my gun this morning for any particular purpose at all. I just took it with me as I usually do. Sometimes I take it with me for signal purposes. The gun is not valuable. Anyone who wants it can have it for \$10.00. I wouldn't have any hesitancy in leaving it at the cabin. The cabin is not locked. I had no authority to lock the cabin. I was making this cruise for my father. He is somewhat engaged [81] in the timber business. That was the purpose of that cruise. He wanted this cruise because he wanted the camp site for a summer resort. He wanted to see if the timber was of any value also, and if it was worth what they asked for it. Mrs. Metzler owned the land. This land belonged to the Metzlers before the forest reserve was created. I fed a dog at the camp. That is, I threw him some scraps. I do not recall seeing the brindle bulldog on the 18th. I don't remember, but he may have been there. It has been approximately two years since I have been across the river over on Big Creek.

I bought my car on the 15th, loaded it with groceries and bought provisions for my trip. I went in on Sunday evening and left some groceries at the house, including the cornmeal. I intended to take the meal with me, but I forgot it. I have about half a sack of it at my house now. When I drove my car home I knew there was some corn-

(Testimony of James Reece.)

meal in the back of my car. The sack had leaked when I picked it up.

I believe Charlie Nielsen brought a dozen of eggs. Charles had arranged to go on the fishing trip. He did not say anything about bringing Dave. I told him I had provisions with me. I also brought a small sack of sugar. I didn't know just how long I would be there, one day or two.

Redirect Examination.

(By Mr. WOOD.)

The sugar sack's contents was cane sugar of the granulated sugar.

Calling my attention to Government's Exhibit No. 1, which seems to be a kind of coarse sugar, my sugar did not look anything like that. I made no examination of the other packages in the cabin.
[82]

I never looked through anything outside of what I took. I believe there was also a shotgun in that cabin, which I saw standing in the corner. That was there both times when I was there. I believe there was also a fish basket in the corner, but I never paid any attention to it. I did not know anything about there being any corks in it. I never owned a fish basket and did not take one with me when I went fishing.

TESTIMONY OF THOMAS B. ELLIOTT FOR
DEFENDANTS (RECALLED).

THOMAS B. ELLIOTT, recalled as a defense witness, testified as follows:

Calling my attention to the contents of the cabin, that is the first cabin on the right, the cooking utensils and stove belong to me. I have owned them for five or six years. I never took them away. I sometimes direct as many as 15 or 20 people a day from my place down to the old mill site.

I have known the defendant James Reece from 16 to 18 years, and have been very well acquainted with him. I know his reputation in the community in which he resides. I know that his reputation as a law-abiding citizen is good. I know his reputation both in Tacoma and in my community, as I am acquainted in both places.

Cross-examination.

(By Mr. GORDON.)

I am in and out of Tacoma all the time. James Reece lived with me for a good many years, and we have been very closely connected with him. I go to his house. I meet him pretty near every time I come to town, if he is in town. We have many mutual friends. Among those who know him he has a good reputation. I mean by that that it is good among the majority of people who know him.

[83]

Whereupon the defendants rested.

TESTIMONY OF THOMAS B. ELLIOTT, FOR
THE GOVERNMENT (RECALLED).

THOMAS B. ELLIOTT, recalled on behalf of the prosecution, testified as follows:

I am acquainted with the geography of that neighborhood. This camp is on the north side of the Nisqually River between this camp and Big Creek. It is on the stream right between the mill and Big Creek. Right straight across south I would say, there is a tributary of the river running through there. I never came across at the point you are asking about, and never walked through there. When I am fishing in there I go up stream and go down at the head of it. Sometimes I fish a quarter of a mile or half a mile down and then go back up, to keep from going through those devil-plugs. I am not familiar with it otherwise. Crossing the river you come first to this tributary and then to Big Creek. The trail would be about a half a mile or more across. The tributary has no name that I know of. Big Creek has not a great deal of water. The Nisqually has quite a lot. This other little stream is just a small seepage stream.

Cross-examination.

(By Mr. WRIGHT.)

You go about a mile to get from one stream to the other. You would have to go south over to Big Creek. The river runs pretty near east and west, not quite. On the left bank of the Nisqually

(Testimony of Mark Y. Croxall.)

there is no trail direct there at all, where you have asked me. [84]

TESTIMONY OF MARK Y. CROXALL, FOR
THE GOVERNMENT (IN REBUTTAL).

MARK Y. CROXALL, called as a witness on rebuttal, testified as follows:

I am not familiar with Big Creek. I have been up Big Creek from the other side. I desire to correct my testimony to the effect that the still was on the first stream that we came to. After we crossed the Nisqually River, we didn't cross any stream at all.

Cross-examination.

(By Mr. WRIGHT.)

I usually time the distance by my watch, it took ten minutes by my watch to walk up.

TESTIMONY OF RICHARD A. LAMBERT,
FOR THE GOVERNMENT (RECALLED IN
REBUTTAL).

RICHARD A. LAMBERT, recalled as a witness, testified as follows:

Morbacher and I were the first to enter the cabin in which the automobile seat was found. It was leaned up against the wall. The provisions in the cabin consisted of about one dozen eggs, two loaves of bread, about three or four pounds of bacon, about a pound of coffee in a can and some butter on the table. [85]

On June 30th, 1926, the jury returned into court its verdict of guilty as charged against all defendants.

On June 30th all defendants filed their motion for a new trial.

On July 1st, all defendants moved the Court for an order in arrest of judgment.

On July 6th, motion for arrest of judgment was denied as to all defendants. To which defendants, and each of them, excepted and exception was allowed.

On July 6th the defendant Dave Nielsen was by the Court sentenced to serve a term in the United States Penitentiary of one year and one day at McNeil's Island; and to pay to the United States a fine of \$1,000.00, and the costs of prosecution.

Defendant Charles Nielsen was sentenced to serve six months in the County Jail for Pierce County; and to pay to the United States a fine of \$500.00, and to pay the costs of prosecution.

James E. Reece was sentenced to serve a term in the County Jail for Pierce County of three months; and to pay to the United States a fine of \$250.00, and to costs of prosecution.

The term was continued by order of the Court as to this case and all proceedings therein. Defendants were allowed until the 20th day of July, 1926, in which to lodge their bill of exceptions.

The hearing on the motion for a new trial was set for the 27th day of September, 1926. [86]

The Court instructing the Jury gave, among others, the following instruction:

Now, the exact date it is charged this conspiracy is entered into is not material in the sense it has to be shown. It is sufficient if the evidence shows it was entered into within the time of the statute of limitations before the return of the indictment.

No instruction was given defining the statute of limitations. [87]

On the 27th day of September, 1926, hearing on the motion for a new trial was continued to the next law day, and thereafter continued from law day to law day until the 11th of October, 1926, at which time argument was heard upon said motion by the Court; and said motion having been by the Court considered, the motion was by the Court denied, to which order the defendants and each of them excepted and exception was by the Court allowed.

On the 15th day of September, 1926, by order of the District Judge the matter of the settlement of the bill of exceptions was continued to the 25th day of September, 1926, at ten o'clock A. M.

On the 11th day of October, 1926, at ten o'clock A. M. the settlement of said bill of exceptions was again continued until Wednesday, the 13th day of October, 1926, at ten o'clock A. M.

[Endorsed]: Filed Oct. 13, 1926. [88]

ORDER SETTLING BILL OF EXCEPTIONS.

Now, on this 13th day of October, 1926, the above cause came on for hearing upon the application of the defendants David Nielson, Charles Nielson and James Reece to settle the bill of exceptions in

this cause; counsel for the Government and defendants being present and agreeing that the same contained the only material facts occurring in the trial of said cause,—

NOW, THEREFORE, IT IS HEREBY ORDERED that the foregoing bill of exceptions be and the same is hereby settled as a true bill of exceptions in said cause, and the same is hereby certified accordingly by the undersigned, Judge of this court who presided at the trial of said cause, as a true and correct bill of exceptions; and the Clerk of this court is hereby ordered to file the same as a record in said cause and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

Dated this 13th day of October, 1926.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Filed Oct. 13, 1926. [89]

PETITION FOR WRIT OF ERROR.

To the Honorable EDWARD E. CUSHMAN,
Judge of the United States District Court for
the Western District of Washington:

Come now Dave Nielson, Charles Nielson and James E. Reese, defendants above named and petitioners in error herein, and respectfully show:

I.

That your petitioners are the only defendants proceeded against to final judgment in the above-entitled cause.

II.

That on the 30th day of June, 1926, a jury duly impaneled and sworn to try the case in the above-entitled court, found a verdict of guilty against each of said defendants above named upon the indictment returned herein; and that thereafter on the 6th day of July, 1926, final judgment was made and entered herein whereby it was adjudged that the defendant Dave Nielson be confined in the United States Penitentiary at McNeils Island for the period of one year and one day and to pay to the United States a fine of \$1,000.00 and the costs of prosecution; and that the defendant Charles Nielson be [90] confined in the Pierce County Jail for a period of six months and pay to the United States a fine of \$500.00 and the costs of prosecution; and that the defendant James E. Reese be confined in the Pierce County Jail for the period of three months and pay to the United States a fine of \$250.00 and the costs of prosecution, all of which will more fully appear from said judgment which is hereby referred to and made a part of this petition.

III.

Your petitioners represent that in said judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of the defendants above named and each of them, all of which will more in detail appear from the assignment of errors, which is filed herein.

Your petitioners above named, feeling themselves aggrieved by said verdict and judgment entered thereon as aforesaid, herewith petition this Honor-

able Court for an order allowing them to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of said court in such cases made and provided.

WHEREFORE, your petitioners pray that a writ of error issue in their behalf to the United States Circuit Court of Appeals for the Ninth Circuit as aforesaid for the correction of errors so complained of; and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Circuit Court of Appeals.

FRANK S. CARROL,
WESLEY LLOYD,
A. J. CROTEAU,

Attorneys for Petitioners in Error. [91]

Service of the foregoing petition and receipt of a copy thereof is hereby admitted this 22d day of November, 1926.

BERTIL E. JOHNSON,
Assistant United States Attorney.

[Indorsed]: Filed Nov. 30, 1926. [92]

ASSIGNMENT OF ERRORS CLAIMED BY DAVE NIELSON.

Comes now Dave Nielson, one of the above-named defendants, and serves and files the following separate assignment of errors upon which he, as one of the plaintiffs in error, will rely in the prosecution of the writ of error herein to the United States Circuit Court of Appeals for the Ninth Circuit from

the judgment and sentence herein entered and imposed on the 6th day of July, 1926:

I.

The Court erred in denying the petition of Noland Nelson to suppress evidence, i. e.: A small quantity of whiskey found in a shack occupied by said Noland Nelson as his home, which said home was searched without warrant of law. (Pp. 4 and 5, Bill of Exceptions.)

In that connection, the Court further erred in excluding testimony as follows:

MARK Y. CROXALL.—(Cross-examination.) We entered Nelson's house.

Q. Did you have a warrant for that? [93]

Mr. GORDON.—(District Attorney.) Objected to as immaterial.

The COURT.—Objection sustained.

Mr. WOODS.—Exception.

WITNESS.—(Continuing.) The bottle of whiskey was found in Nelson's cabin on the bed. (Said bottle of whiskey referred to being marked Government's Exhibit No. 3.) (Pp. 16 and 17, Bill of Exceptions.)

II.

The Court erred in permitting the witness Mark Y. Croxall to testify as follows:

Mr. CROXALL.—I do not know whether Dave (Nielson) was living at the Oscar Nielson place at the time or not. I know I arrested him there.

Mr. WOODS.—I object to that. Do you

mean to say you arrested him there on this charge involved in this case?

A. Not in this case, no.

The COURT.—Objection overruled. Was it before this case?

A. Yes.

The COURT.—Objection overruled.

Mr. WOODS.—Exception. * * *

Mr. WRIGHT.—The defendant Reese objects to that evidence as being entirely too remote, and in no way connecting him with it.

The COURT.—Objection will be overruled.

* * *

Mr. WRIGHT.—Exception.

The COURT.—Allowed. (Pp. 10 and 11, Bill of Exceptions.)

The Court further erred in permitting the witness Mark Y. Croxall to testify further as follows:

Q. (By the District Attorney.) At the time you have spoken of (referring to an occasion about two or three years ago), when you drank some whiskey that tasted like this near Oscar Nielson's cabin, where did you find the whiskey?
[94]

A. Some whiskey was found in the barn on Oscar Nielson's place. The same party found it at the still where Dave Nielson was.

Q. Did you find Dave Nielson at that still?

A. Yes.

Mr. WOODS.—We object to that for the further reason that there is no contention of an overt act at that time. The only contention as

to an overt act is these set forth in the complaint here made.

The COURT.—You are not confined to overt acts to show the arrest of the defendant Dave Nielson. Objection overruled.

Mr. WOODS.—Exception.

Q. What was Dave Nielson doing apparently at the still at that time two years ago?

A. He was running the still.

Q. Was he afterwards charged with that offense in this court?

A. He was.

Q. What was his plea to that charge?

A. Plea of guilty.

Mr. WOODS.—We object to that, and move to strike the answer.

The COURT.—Objection overruled.

Mr. WOODS.—We note an exception.

The COURT.—Exception allowed.

Mr. WRIGHT.—May it be understood that the objection of the defendant James Reese goes to this evidence as being too remote; and may we have an exception to the ruling?

The COURT.—Exception allowed. (Pp. 12, 13 and 14, Bill of Exceptions.)

III.

The Court erred in admitting Government's Exhibit No. 3.

IV.

The Court erred in overruling the motion of the defendant [95] Dave Nielson for an instructed ver-

dict at the close of the Government's case. (Pp. 35, Bill of Exceptions.)

V.

The Court erred in overruling the motion of the defendant Dave Nielson to strike the testimony of Mark Y. Croxall and to withdraw it from the consideration of the jury, said testimony being all of the testimony relating to the arrest and plea of guilty of Dave Nielson more than two years ago. (Pp. 37, Bill of Exceptions.)

• VI.

The Court erred in sustaining the objection of the Government and instructing the jury to disregard the following testimony of S. W. Austin.

Q. (By Mr. WOODS, for the Defendants Nielson.) Did you know about his going fishing?

A. Yes. When he was buying fishing tackle he made the remark that he was going fishing.

Mr. GORDON.—I object to what he said and ask the jury be instructed to disregard it.

The COURT.—Objection sustained. The jury will disregard what was said.

Mr. WOODS.—Exception.

The COURT.—Exception allowed. (Pp. 45, Bill of Exceptions.)

VII.

The Court erred in overruling the motion of the defendant Dave Nielson in arrest of judgment.

VIII.

The Court erred in overruling the motion of the defendant Dave Nielson for a new trial. [96]

IX.

The Court erred in pronouncing judgment and sentence against the defendant Dave Nielson.

WHEREFORE, the defendant Dave Nielson, hereinafter to be known as one of the plaintiffs in error, prays that the judgment of said court be reversed and said cause remanded with instructions to said court to grant a new trial to the defendant Dave Nielson.

FRANK S. CARROLL,
WESLEY LLOYD,
A. J. CROTEAU,

Attorneys for Plaintiff in Error Dave Nielson.

Service of the foregoing assignment of error by delivery of a copy thereof to the undersigned is hereby acknowledged this 22d day of November, 1926.

BERTIL E. JOHNSON,
Assistant United States Attorney.

Filed Nov. 30, 1926. [97]

ASSIGNMENT OF ERRORS CLAIMED BY
CHARLES NIELSON.

Comes now Charles Nielson, one of the above-named defendants, and serves and files the following separate assignment of errors upon which he, as one of the plaintiffs in error, will rely in the prosecution of the writ of error herein to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence

herein entered and imposed on the 6th day of July, 1926:

I.

The Court erred in denying the petition of Noland Nelson to suppress evidence, i. e.: A small quantity of whiskey found in a shack occupied by said Noland Nelson as his home, which said home was searched without warrant of law. (Pp. 4 and 5, Bill of Exceptions.)

In that connection, the Court further erred in excluding testimony as follows:

MARK Y. CROXALL.—(Cross-examination.) We entered Nelson's house.

Q. Did you have a warrant for that? [98]

Mr. GORDON.—(District Attorney.) Objected to as immaterial.

The COURT.—Objection sustained.

Mr. WOODS.—Exception.

WITNESS.—(Continuing.) The bottle of whiskey was found in Nelson's cabin on the bed. (Said bottle of whiskey referred to being marked Government's Exhibit No. 3.) (Pp. 16 and 17, Bill of Exceptions.)

II.

The Court erred in permitting the witness Mark Y. Croxall to testify as follows:

Mr. CROXALL.—I do not know whether Dave (Nielson) was living at the Oscar Nielson place at the time or not. I know I arrested him there.

Mr. WOODS.—I object to that. Do you

mean to say you arrested him there on this charge involved in this case?

A. Not in this case, no.

The COURT.—Objection overruled. Was it before this case?

A. Yes.

The COURT.—Objection overruled.

Mr. WOODS.—Exception. * * *

Mr. WRIGHT.—The defendant Reese objects to that evidence as being entirely too remote, and in no way connecting him with it.

The COURT.—Objection will be overruled.

* * *

Mr. WRIGHT.—Exception.

The COURT.—Allowed. (Pp. 10 and 11, Bill of Exceptions.)

The Court further erred in permitting the witness Mark Y. Croxall to testify further as follows:

Q. (By the District Attorney.) At the time you have spoken of (referring to an occasion about two or three years ago), when you drank some whiskey that tasted like this near Oscar Nielson's cabin, where did you find that whiskey? [99]

A. Some whiskey was found in the barn on Oscar Nielson's place. The same party found it at the still where Dave Nielson was.

Q. Did you find Dave Nielson at that still?

A. Yes.

Mr. WOODS.—We object to that for the further reason that there is no contention of an overt act at that time. The only contention as

to an overt act is these set forth in the complaint here made.

The COURT.—You are not confined to overt acts to show the arrest of the defendant Dave Nielson. Objection overruled.

Mr. WOODS.—Exception.

Q. What was Dave Nielson doing apparently at the still at that time two years ago?

A. He was running the still.

Q. Was he afterwards charged with that offense in this court? A. He was.

Q. What was his plea to that charge?

A. Plea of guilty.

Mr. WOODS.—We object to that, and move to strike the answer.

The COURT.—Objection overruled.

Mr. WOODS.—We note an exception.

The COURT.—Exception allowed.

Mr. WRIGHT.—May it be understood that the objection of the defendant James Reese goes to this evidence as being too remote; and may we have an exception to the ruling?

The COURT.—Exception allowed. (Pp. 12, 13 and 14, Bill of Exceptions.)

III.

The Court erred in admitting Government's Exhibit No. 3.

IV.

The Court erred in overruling the motion of the defendant [100] Charles Nielson for an instructed verdict at the close of the Government's case. (Pp. 35, Bill of Exceptions.)

V.

The Court erred in overruling the motion of the defendant Charles Nielson to strike the testimony of Mark Y. Croxall and to withdraw it from the consideration of the jury, said testimony being all of the testimony relating to the arrest and plea of guilty of Dave Nielson more than two years ago. (P. 37, Bill of Exceptions.)

VI.

The Court erred in sustaining the objection of the Government and instructing the jury to disregard the following testimony of S. W. Austin:

Q. (By Mr. WOODS, for the Defendants Nielson.) Did you know about his going fishing?

A. Yes. When he was buying fishing tackle he made the remark that he was going fishing.

Mr. GORDON.—I object to what he said and ask the jury be instructed to disregard it.

The COURT.—Objection sustained. The jury will disregard what was said.

Mr. WOODS.—Exception.

The COURT.—Exception allowed. (Pp. 45, Bill of Exceptions.)

VII.

The Court erred in overruling the motion of the defendant Charles Nielson in arrest of judgment.

VIII.

The Court erred in overruling the motion of the defendant Charles Nielson for a new trial. [101]

IX.

The Court erred in pronouncing judgment and sentence against the defendant Charles Nielson.

WHEREFORE, the defendant Charles Nielson, hereinafter to be known as one of the plaintiffs in error, prays that the judgment of said Court be reversed and said cause remanded with instructions to said court to grant a new trial to the defendant Charles Nielson.

FRANK S. CARROLL,
WESLEY LLOYD,
A. J. CROTEAU,

Attorneys for Plaintiff in Error Charles Nielson.

Service of the foregoing assignment of errors by delivery of a copy thereof to the undersigned is hereby acknowledged this 22d day of November, 1926.

BERTIL E. JOHNSON,
Assistant United States Attorney.

[Indorsed]: Filed Nov. 30, 1926. [102]

ASSIGNMENT OF ERRORS CLAIMED BY
JAMES E. REESE.

Comes now James E. Reese, one of the above-named defendants, and serves and files the following separate assignment of errors upon which he, as one of the plaintiffs in error, will rely in the prosecution of the writ of error herein to the United States Circuit Court of Appeals for the Ninth Cir-

cuit from the judgment and sentence herein entered and imposed on the 6th day of July, 1926:

I.

The Court erred in denying the petition of Noland Nelson to suppress evidence, i. e.: A small quantity of whiskey found in a shack occupied by said Noland Nelson as his home, which said home was searched without warrant of law. (Pp. 4 and 4, Bill of Exceptions.)

In that connection, the Court further erred in excluding testimony as follows:

MARK Y. CROXALL.—(Cross-examination.) We entered Nelson's house.

Q. Did you have a warrant for that?

Mr. GORDON.—(District Attorney.) Objected to as immaterial. [103]

The COURT.—Objection sustained.

Mr. WOODS.—Exception.

WITNESS.—(Continuing.) The bottle of whiskey was found in Nelson's cabin on the bed. (Said bottle of whiskey referred to being marked Government's Exhibit No. 3.) (Pp. 16 and 17, Bill of Exceptions.)

II.

The Court erred in placing the defendant James E. Reese upon trial without arraignment or plea to the indictment.

III.

The Court erred in permitting the witness Mark Y. Croxall to testify as follows:

Mr. CROXALL.—I do not know whether Dave (Nielson) was living at the Oscar Nielson

place at the time or not. I know I arrested him there.

Mr. WOODS.—I object to that. Do you mean to say you arrested him there on this charge involved in this case?

A. Not in this case, no.

The COURT.—Objection overruled. Was it before this case?

A. Yes.

The COURT.—Objection overruled.

Mr. WOODS.—Exception. * * *

Mr. WRIGHT.—The defendant Reese objects to that evidence as being entirely too remote, and in no way connecting him with it.

The COURT.—Objection will be overruled.

* * *

Mr. WRIGHT.—Exception.

The COURT.—Allowed. (Pp. 10 and 11, Bill of Exceptions.)

The Court further erred in permitting the witness Mark Y. Croxall to testify further as follows:

Q. (By the District Attorney.) At the time you have spoken of (referring to an occasion about two or three years ago), when you drank some whiskey that tasted like this near Oscar Nielson's cabin, where did you find that whiskey? [104]

A. Some whiskey was found in the barn on Oscar Nielson's place. The same party found it at the still where Dave Nielson was.

Q. Did you find Dave Nielson at that still?

A. Yes.

Mr. WOODS.—We object to that for the further reason that there is no contention of an overt act at that time. The only contention as to an overt act is these set forth in the complaint here made.

The COURT.—You are not confined to overt acts to show the arrest of the defendant Dave Nielson. Objection overruled.

Mr. WOODS.—Exception.

Q. What was Dave Nielson doing apparently at the still at that time two years ago?

A. He was running the still.

Q. Was he afterwards charged with that offense in this Court? A. He was.

Q. What was his plea to that charge?

A. Plea of guilty.

Mr. WOODS.—We object to that, and move to strike the answer.

The COURT.—Objection overruled.

Mr. WOODS.—We note an exception.

The COURT.—Exception allowed.

Mr. WRIGHT.—May it be understood that the objection of the defendant James Reese goes to this evidence as being too remote; and may we have an exception to the ruling?

The COURT.—Exception allowed. (Pp. 12, 13 and 14, Bill of Exceptions.)

IV.

The Court erred in admitting Government's Exhibit No. 3.

V.

The Court erred in overruling the motion of the

defendant [105] James E. Reese to strike the testimony of Mark Y. Croxall and to withdraw it from the consideration of the jury, said testimony being all of the testimony relating to the arrest and plea of guilty of Dave Nielson more than two years ago. (Pp. 37, Bill of Exceptions.)

VI.

The Court erred in overruling the motion of the defendant Reese, at the close of all of the Government's testimony, to dismiss. (Pp. 37 and 38, Bill of Exceptions.)

VII.

The Court erred in overruling the motion of the defendant James E. Reese in arrest of judgment.

VIII.

The Court erred in overruling the motion of the defendant James E. Reese for a new trial.

IX.

The Court erred in pronouncing judgment and sentence against the defendant James E. Reese.

WHEREFORE, the defendant James E. Reese, hereinafter to be known as one of the plaintiffs in error, prays that the judgment of said court be reversed and said cause remanded with instructions to said Court to grant a new trial to the defendant James E. Reese.

FRANK S. CARROLL,
WESLEY LLOYD,
A. J. CROTEAU,

Attorneys for Plaintiff in Error James E. Reese.

Service of the foregoing assignment of error by delivery of a copy thereof to the undersigned is hereby acknowledged this 22d day of November, 1926.

BERTIL E. JOHNSON,
Assistant United States Attorney.

[Indorsed]: Filed Nov. 30, 1926. [107]

ORDER ALLOWING WRIT OF ERROR.

Now, on this 29th day of November, 1926, came the defendants Dave Nielson, Charles Nielson and James E. Reese and filed herein and prestented to the Court their petition praying for the allowance of a writ of error intended to be urged by them; and praying also that a transcript of the records, proceedings and papers upon which judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that such other and further proceedings may be had as may be proper in the premises,—

NOW, THEREFORE, upon consideration of said petition and being fully advised in the premises, the Court does hereby allow said writ of error; and

IT IS BY THE COURT FURTHER ORDERED that until the period of fifteen days shall have expired from the date hereof, the defendants and each of them shall be enlarged upon their present bonds; and the defendants, and each of them, shall have said period of fifteen days in which

to prosecute their applications for a supersedeas in the Circuit Court of Appeals for the Ninth Circuit.

EDWARD E. CUSHMAN,

Judge.

Service of the within order by delivery of a copy to the undersigned is hereby acknowledged this 29th day of November, 1926.

BERTIL E. JOHNSON,

Assistant U. S. District Atty.

[Indorsed]: Filed Nov. 30, 1926. [108]

WRIT OF ERROR.

United States of America,

Ninth Judicial Circuit.

The President of the United States of America: To the Honorable Judge of the District Court of the United States for the Western District of Washington, Southern Division:

Because, in the records and proceedings, as also in the rendition of judgment of a plea, which is in the said District Court before you, between the United States as plaintiff and Dave Nielson, Charles Nielson and James E. Reese as defendants, a manifest error hath happened to the great damage of the said defendants and each of them as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then, under your seal, distinctly and

openly, you send the records and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of [109] California, where said court is sitting, within thirty days from the date hereof, to wit: 4th day of January, 1927, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States of America, this 4th day of December, 1926.

ED. M. LAKIN,
Clerk of the United States District Court for the
Western District of Washington, Southern
Division.

By Alice Huggins,
Deputy Clerk.

[Indorsed]: Filed Dec. 4, 1926. [110]

NOTICE OF APPLICATION FOR ORDER OF
SUPERSEDEAS, ETC.

To the United States of America and to the United
States District Attorney for the Western Dis-
trict of Washington: .

You, and each of you, will please take notice that
on Thursday, the 9th day of December, 1926, at the
hour of ten o'clock in the forenoon of said date, or
as soon thereafter as counsel can be heard, the de-
fendants, and each of them herein, will make appli-
cation to the Honorable Edward E. Cushman, Judge
of the United States District Court for the Western
District of Washington, Southern Division, holden
at Tacoma, for an order of supersedeas in conjunc-
tion with the writ of error herein sued out, and will
at the same time make application to said Court for
the approval of the writ of error bonds of the de-
fendants, and each of them.

WESLEY LLOYD,
A. J. CROTEAU,
FRANK A. CARROLL,
Attorneys for Defendants,

Perkins Building, Tacoma, Washington. [111]

Due and timely service of the above and foregoing
notice admitted this 8th day of December, 1926; and
further notice of time and place of the application
herein noticed to be made is waived.

BERTIL E. JOHNSON,
Assistant United States District Attorney.

[Indorsed]: Filed Dec. 8, 1926. [112]

AFFIDAVIT OF WESLEY LLOYD.

United States of America,
Western District of Washington,
Southern Division,—ss.

Wesley Lloyd, being first on his oath duly sworn, deposes and says; That he is one of counsel for the defendants above named; and that heretofore, on behalf of said defendants as plaintiffs in error, he has sued out his writ of error and lodged said writ in the office of the Clerk of the United States Circuit Court for the Ninth Circuit, together with his affidavit setting forth in detail the steps taken to perfect the writ of error in said cause.

Affiant further says that this Court heretofore at the time of the granting of the writ of error, orally declined to make an order of supersedeas and fix the supersedeas bond, but allowed the defendants fifteen days from the date of the granting of the writ of error, to wit: The 30th day of November, 1926, in which to *such for* the order of supersedeas in the United States Circuit Court of Appeals for the Ninth Circuit. That pursuant thereto, affiant on behalf of the defendants presented a motion for supersedeas supported by his affidavit setting forth all of the facts disclosed by the [113] record herein, together with his stipulation with the Assistant United States District Attorney that said motion might be heard without the appearance of counsel and without notice; and that said matter was thereupon presented, as affiant is informed and be-

lieves, to the United States Circuit Court of Appeals, or one of the Judges thereof, at San Francisco, by the Clerk of said Court; and that the Judges of said Circuit Court of Appeals declined to act upon said application for supersedeas until the complete record shall have been filed in said court.

Affiant further says that said Circuit Court of Appeals, or the Judges thereof, as affiant is informed and believes, prefer that the District Court act definitely and make an order either denying or granting the application for supersedeas; and that said Circuit Court of Appeals, or the Judges thereof, have, through the Clerk of said Court, communicated their desires in that respect to affiant.

Affiant further says that his information and belief herein related is based upon a telegram received from the Clerk of said Circuit Court of Appeals, a copy of which is hereto attached, marked Exhibit "A," and by reference made a part of this affidavit.

Affiant further says that in the ordinary course of proceedings, it will be impossible to procure the completed record on the writ of error herein sued out and file the same in the office of the Clerk of said Circuit Court of Appeals prior to the first day of January, 1927.

Affiant further says that he makes this affidavit in support of his application to be presented in open court to the Judge of said District Court as hereinafter to be noticed for the order of supersedeas and the approval of the writ of error bond to be tendered with the said application. [114]

And further affiant saith not.

WESLEY LLOYD.

Subscribed and sworn to before me this 8th day of December, 1926.

A. J. CROTEAU,
Notary Public in and for the State of Washington,
Residing at Tacoma.

[Indorsed]: Received copy Dec. 8th, 1926.

BERTIL E. JOHNSON,
H.

Asst. U. S. Attorney.

[Indorsed]: Filed Dec. 8, 1926. [115]

EXHIBIT "A."

December 7, 1926.

San Francisco, California.

Motion for supersedeas Nielson et al. versus Government received. Granting supersedeas discretionary. Court will not act without record. Prefers that District Court act definitely by granting or denying application.

O'BRIEN,
Deputy Clerk.

[Indorsed]: Filed Dec. 8, 1926. [116]

COPY OF JOURNAL RECORD.

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division of said District on the 9th day of December, 1926, the Honorable EDWARD E. CUSHMAN, United States District Judge presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal record of said Court as follows:

[Title of Cause.]

HEARING.

Now on this 9th day of December, 1926, each of the within named defendants having noted application for an order fixing the amount and approving of supersedeas bail pending appeal herein, the Court denies the application of each defendant, holding that it has no jurisdiction to do so. [117]

COST BOND OF JAMES E. REESE ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS: That we, James E. Reese, as principal, and The Columbia Casualty Company of New York, as sureties, are held and firmly bound unto the United States of America in the above-entitled action in the full penal sum of \$200.00, lawful money of the United States, for the payment of which, well and

truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of the above and foregoing obligation is such that,

WHEREAS, the above-named principal, James E. Reese, was on the 30th day of June, 1926, found guilty of knowingly, wilfully, unlawfully and feloniously combining, conspiring, confederating and agreeing with Dave Nielson, Charles Nielson, Noland Nelson and divers other persons to commit certain offenses against the United States, that is to say, to violate Section 37 of the Penal Code, known as the National Prohibition Act and certain statutes in aid of the revenue of the United States; and was, on the 2d day of July, 1926, sentenced to serve a period of [118] three months in the Pierce County Jail of the State of Washington and to pay to the United States a fine of \$250.00 and the costs of prosecution, which said judgment and sentence of the Court was pronounced in pursuance of the verdict of a jury theretofore duly and regularly returned against said defendant in said cause; and

WHEREAS, the said James E. Reese has sued out his writ of error in said cause to the Circuit Court of Appeals of the United States of America for the Ninth Circuit;

NOW, THEREFORE, if the above-bounden principal, James E. Reese, shall diligently prosecute said writ of error to effect; and if he fail to make his plea good shall answer all damages and costs in connection with the suing out of said writ of error,

then this obligation to be null and void; otherwise to be and remain in full force and effect.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals this 10th day of December, A. D. 1926.

Principal.

THE COLUMBIA CASUALTY COMPANY OF N. Y.

[Seal]

By R. E. MAHAFFAY,

Attorney-in-Fact.

Sureties.

[Indorsed]: Filed Dec. 10, 1926. [119]

United States of America,
State of Washington,
County of Pierce,—ss.

I, the undersigned, a notary public in and for the State of Washington, do hereby certify that on this 10th day of December, 1926, personally appeared before me R. E. Mahaffay, to me known to be the attorney-in-fact for the Columbia Casualty Company of New York and to be the individual who executed the within and foregoing bond for and on behalf of the said Columbia Casualty Company of New York; and that he acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned; that he stated to me that he was authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. J. CROTEAU,
Notary Public in and for the State of Washington,
Residing at Tacoma. [119-A]

COST BOND OF DAVE NIELSON ON WRIT
OF ERROR.

KNOW ALL MEN BY THESE PRESENTS:
That we, Dave Nielson, as principal, and The Columbia Casualty Company of New York, as sureties, are held and firmly bound unto the United States of America in the above-entitled action in the full penal sum of \$200.00, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of the above and foregoing obligation is such that,

WHEREAS, the above-named principal, Dave Nielson, was on the 30th day of June, 1926, found guilty of knowingly, wilfully, unlawfully and feloniously combining, conspiring, confederating and agreeing with Charles Nielson, James E. Reese, Noland Nelson and divers other persons to commit certain offenses against the United States, that is to say, to violate Section 37 of the Penal Code, known as the National Prohibition Act and certain statutes

in aid of the revenue of the United States; and was, on the 2d day of July, 1926, sentenced to serve a period of [120] one year and one day in the United States Penitentiary at McNeils Island and to pay to the United States a fine of \$1,000.00 and the costs of prosecution, which said judgment and sentence of the Court was pronounced in pursuance of the verdict of a jury theretofore duly and regularly returned against said defendant in said cause; and

WHEREAS, the said Dave Nielson has sued out his writ of error in said cause to the Circuit Court of Appeals of the United States of America for the Ninth Circuit;

NOW THEREFORE, if the above bounden principal, Dave Nielson, shall diligently prosecute said writ of error to effect; and if he fail to make his plea good shall answer all damages and costs in connection with the suing out of said writ of error, then this obligation to be null and void; otherwise to be and remain in full force and effect.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals this 10th day of December, A. D. 1926.

DAVE NIELSON,
Principal.

COLUMBIA CASUALTY COMPANY OF
N. Y.

[Seal]

By R. E. MAHAFFAY,
Attorney-in-Fact.
Sureties.

[Indorsed]: Filed Dec. 10, 1926. [121]

United States of America,
State of Washington,
County of Pierce,—ss.

I, the undersigned, a notary public in and for the State of Washington, do hereby certify that on this 10th day of December, 1926, personally appeared before me R. A. Mahaffay, to me known to be the attorney-in-fact for the Columbia Casualty Company of New York and to be the individual who executed the within and foregoing bond for and on behalf of the said Columbia Casualty Company of New York; and that he acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned; that he stated to me that he was authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. J. CROTEAU,

Notary Public in and for the State of Washington,
Residing at Tacoma. [121-A]

COST BOND OF CHARLES NIELSON ON
WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS:
That we, Charles Nielson, as principal, and The Columbia Casualty Company of New York, as sureties, are held and firmly bound unto the United States of America in the above-entitled action in the

full penal sum of \$200.00, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of the above and foregoing obligation is such that,

WHEREAS, the above-named principal, Charles Nielson, was on the 30th day of June, 1926, found guilty of knowingly, wilfully, unlawfully and feloniously combining, conspiring, confederating and agreeing with Dave Nielson, James E. Reese, Noland Nelson and divers other persons to commit certain offenses against the United States, that is to say, to violate Section 37 of the Penal Code, known as the National Prohibition Act and certain statutes in aid of the revenue of the United States; and was, on the 2d day of July, 1926, sentenced to serve a period of [122] six months in the Pierce County Jail of the State of Washington and to pay to the United States a fine of \$500.00 and the costs of prosecution, which said judgment and sentence of the Court was pronounced in pursuance of the verdict of a jury theretofore duly and regularly returned against said defendant in said cause; and

WHEREAS, the said Charles Nielson has sued out his writ of error in said cause to the Circuit Court of Appeals of the United States of America for the Ninth Circuit;

NOW, THEREFORE, if the above-bounden principal, Charles Nielson, shall diligently prosecute said writ of error to effect; and if he fail to

make his plea good shall answer all damages and costs in connection with the suing out of said writ of error, then this obligation to be null and void; otherwise to be and remain in full force and effect.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals this 10th day of December, A. D. 1926.

CHARLES NIELSON,

Principal.

COLUMBIA CASUALTY COMPANY OF
N. Y.

[Seal]

By R. E. MAHAFFAY,

Attorney-in-fact,

Sureties.

[Indorsed]: Filed Dec. 10, 1926. [123]

United States of America,
State of Washington,
County of Pierce,—ss.

I, the undersigned, a notary public in and for the State of Washington, do hereby certify that on this 10th day of December, 1926, personally appeared before me R. E. Mahaffay, to me known to be the attorney in-fact for the Columbia Casualty Company of New York and to be the individual who executed the within and foregoing bond for and on behalf of the said Columbia Casualty Company of New York; and that he acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned; that he stated to me that he was authorized so to do.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal the day and year in this certificate first above written.

A. J. CROTEAU,
Notary Public in and for the State of Washington,
Residing at Tacoma. [123-A]

CITATION ON WRIT OF ERROR.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Southern Division, wherein Dave Nielson, Charles Nielson, and James E. Reese are plaintiffs in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

WITNESS, the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court for the Western District of Washington, this 10th day of December, 1926.

EDWARD E. CUSHMAN,
Judge. [124]

Service of the foregoing citation admitted this
— day of December, 1926.

Asst. United States Attorney. [125]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court
for the Western District of Washington,
Southern Division:

You will please make a transcript of the record
on the writ of error to the United States Circuit
Court of Appeals for the Ninth Circuit in the
above-entitled cause, omitting all captions except
on the indictment, and include therein the follow-
ing:

Indictment.

Arraignment and plea.

Demurrers.

Motion for a bill of particulars.

Motion to suppress evidence.

Affidavit in support of motion to suppress evidence.

Verdict.

Motion for a new trial.

Motion in arrest of judgment.

Order denying motion for a new trial.

Order denying motion in arrest of judgment.

Judgment and sentence.

Stipulations and orders extending time for filing.

Bill of exceptions.

Notice of lodgment of bill of exceptions with Clerk.

Order settling bill of exceptions.

Petitions for writ of error.

Assignments of error.

Order allowing writ of error.

Writ of error.

Citation, with acceptance of service thereon.

Cost bond.

Notice of application for supersedeas.

Affidavit in support of motion for supersedeas, and
order denying supersedeas; order extending
term, and [126]

This praecipe, with acceptance of service thereon.

LLOYD & CROTEAU,

FRANK S. CARROLL,

Attorneys for Defendants,

Office and P. O. Address:

140 Perkins Building, Tacoma, Washington.

Service of the within praecipe by delivery of a
copy to the undersigned is hereby acknowledged
this 10th day of December, 1926.

BERTIL E. JOHNSON,

Assistant United States District Attorney.

[Indorsed]: Filed Dec. 10, 1926. [127]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,

Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States
District Court for the Western District of Wash-

ington, do hereby certify that the foregoing type-written pages numbered from one to one hundred twenty-eight inclusive, are a full, true and correct copy of the record and proceedings in Cause No. 5436, United States of America, Plaintiff, *versus* Dave Nielsen, Charles Nielsen and James Clifford Reese, Defendants, in said District Court, as required by praecipe of counsel filed and shown herein and as the same remain of record in the office of the Clerk of said District Court, and that the same is transmitted herewith and constitutes my return herein.

I further certify that I hereto attach and transmit the original citation in said cause with acceptance of service thereon.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office on behalf of the plaintiffs in error for making the record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's Fees (Act Feb. 11, 1925) for making record and return, 270 folios @ 15¢..	\$40.00
Appeal	\$ 5.00
Seal	\$.50

Attest my hand and the seal of said District Court at Tacoma, Washington, in said District this 10th day of December, A. D. 1926.

[Seal]

ED. M. LAKIN,

Clerk.

By Alice Huggins,

Deputy. [128]

[Endorsed]: No. 5021. United States Circuit Court of Appeals for the Ninth Circuit. Dave Nielson, Charles Nielson and James E. Reese, Plaintiffs in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

Filed December 13, 1926.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit, Holden at San Francisco,
California.

No. —.

DAVE NIELSON, CHARLES NIELSON, and
JAMES E. REESE,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

MOTION FOR SUPERSEDEAS.

Come now the plaintiffs in error above named and move the Court for an order of supersedeas in the above-entitled case superseding and staying

the judgment of the District Court for the Western District of Washington, Southern Division; upon such terms and conditions as to this Court may in the premises seem just and proper.

This motion is based upon the records and files of this case now before the Court, and especially upon the affidavit of Wesley Lloyd, one of counsel for the plaintiffs in error, herewith filed.

WESLEY LLOYD,

A. J. CROTEAU,

FRANK S. CARROLL,

Attorneys for Plaintiffs in Error,

Office and P. O. Address:

140 Perkins Building, Tacoma, Washington.

Copy received this 4th day of December, 1926.

BERTIL E. JOHNSON,

Asst. U. S. Atty.

In the United States Circuit Court of Appeals for
the Ninth Circuit, Holden at San Francisco,
California.

No. —.

DAVE NIELSON, CHARLES NIELSON, and
JAMES E. REESE,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

AFFIDAVIT OF WESLEY LLOYD.

United States of America,
Western District of Washington,
Southern Division,—ss.

Wesley Lloyd, being first on his oath duly sworn, deposes and says: That the plaintiffs in error herein were by a verdict of the jury duly returned into court on the 30th day of June, 1926, found guilty of confederating, conspiring and agreeing among themselves unlawfully and feloniously to violate certain laws of the United States of America, namely: Section 37 of the Penal Code, commonly known as the National Prohibition Act, and certain acts and statutes in aid of the revenue of the United States; and that thereafter on the next day they caused to be filed and served their motions in arrest of judgment and for a new trial. That the motion in arrest of judgment was argued before the District Court for the Western District of Washington, Southern Division, on the 2d day of July, 1926; and that said motion in arrest of judgment was by the Court considered and denied, but that the motion for a new trial was not heard on said day but was passed over for further consideration by the District Court until a later date; but that the Court immediately proceeded to and did pass judgment and sentence against these plaintiffs in error as follows: Sentencing the above-named plaintiff in error Dave Nielson to imprisonment in the United States Penitentiary at McNeil Island for one year and one day and to

pay a fine of \$1,000.00, besides the costs of prosecution; and sentencing the above-named plaintiff in error Charles Nielson to imprisonment in the Pierce County Jail for a period of six months and to pay to the United States a fine of \$500.00 besides the costs of prosecution; and sentencing the above-named plaintiff in error James E. Reese to imprisonment in the Pierce County Jail for a period of three months and to pay to the United States a fine of \$250.00 besides the costs of prosecution; and that thereafter and while said motion for a new trial was pending and undetermined and before the expiration of 42 days the term of said District Court then sitting was ended, but that said term was by order of said Court continued for all matters pertaining to said case, and within the time for filing and for presentation and allowance of the bill of exceptions, was by said District Court extended. And that within said time as extended said bill of exceptions was lodged in the office of the District Clerk for said District and a copy thereof served upon the District Attorney for said district. And that thereafter at the time fixed by the Court upon order, said bill of exceptions was by the Court settled and certified and is now of record in the office of said Clerk for said District.

Affiant further says that the hearing upon the motion for a new trial was continued from law day to law day upon two separate occasions and at the first available opportunity, i. e. on the 11th day of October, 1926, said motion for a new trial was presented to the District Judge and argued by coun-

sel for the respective parties and considered by said District Judge; and said motion was denied, to which the plaintiffs in error were allowed their exception.

That thereafter on, to wit, the 2d day of December, 1926, and within six months after the rendition of final judgment in said case and within sixty days after the determination of the motion for a new trial, the plaintiffs in error caused to be filed in said District Court their petition for a writ of error, together with their assignments of error; and that thereupon the said District Court allowed said writ of error by order duly made and entered, a copy of which order is hereto attached marked Exhibit "A," and by reference made a part of this affidavit.

Affiant further says that on the 4th day of December, 1926, said writ of error was duly attested by the Clerk of the United States District Court for the Western District of Washington, Southern Division, which said writ is herewith filed; and that said writ was on the same day served by lodging a copy thereof in the office of the Clerk of said District Court at Tacoma, the same being the place where the record of said case remains.

Affiant further says that said District Judge in said order herein referred to allowed the plaintiffs in error a period of 15 days after the 2d day of December in which to sue out their application for the supersedeas during the prosecution of the writ of error, and which said order provided that during said interval of 15 days the plaintiffs in er-

ror should be enlarged upon their recognizance theretofore entered into.

Affiant further says that said writ of error is prosecuted in good faith on behalf of each of the plaintiffs in error; that he believes the same to be well founded in law and meritorious; and that the purpose of the prosecution of said writ of error is to correct what affiant believes to be a manifest error of said District Court; and that it is not prosecuted to delay the speedy administration of justice; and that unless said supersedeas be allowed the plaintiffs in error will by virtue of the premises be imprisoned during the determination of said writ of error and will thereby be entirely deprived of the fruits of their writ of error if prosecuted to a successful conclusion.

Affiant further says that he has caused the above-entitled matter to be docketed in the said Circuit Court of Appeals for the Ninth Circuit and has filed herewith the writ of error and has ordered, and has by his praecipe directed the preparation of the record and certification thereof, and a citation; and that the same will be filed in this court as soon as prepared and certified by the officer having charge thereof.

Affiant further says that he makes this affidavit in support of his application for and on behalf of the plaintiffs in error, and each of them, for an allowance of supersedeas to be issued in the sound discretion of this Court, directing that pending the final determination of the writ of error herein filed that the judgment of the District Court be stayed

and superseded upon such terms and conditions as may seem proper in the premises.

And further affiant saith not.

WESLEY LLOYD.

Subscribed and sworn to before me this 4th day of December, 1926.

[Seal]

CROTEAU,

Notary Public in and for the State of Washington, Residing at Tacoma.

EXHIBIT "A."

United States District Court, Western District of Washington, Southern Division.

No. 5436.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVE NIELSON, CHARLES NIELSON,
JAMES E. REESE and NOLAND NELSON,

Defendants.

ORDER.

Now, on this 29th day of November, 1926, came the defendants Dave Nielson, Charles Nielson and James E. Reese and filed herein and presented to the Court their petition praying for the allowance of a writ of error intended to be urged by them; and praying also that a transcript of the records, proceedings and papers upon which judgment

herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that such other and further proceedings may be had as may be proper in the premises.

NOW, THEREFORE, upon consideration of said petition, and being fully advised in the premises, the Court does hereby allow said writ of error; and it is by the Court further ORDERED that until the period of 15 days shall have expired from the date hereof the defendants, and each of them, shall be enlarged upon their present bonds and the defendants, and each of them, shall have said period of 15 days in which to prosecute their application for a supersedeas in the Circuit Court of Appeals for the Ninth Circuit.

EDWARD E. CUSHMAN,
Judge.

Service of the within order by delivery of a copy to the undersigned is hereby acknowledged this 29th day of November, 1926.

BERTIL E. JOHNSON,
Asst. U. S. District Atty.

Endorsed and filed in the United States District Court, Western District of Washington, Southern Division, November 30, 1926.

EDWARD M. LAKIN,
Clerk.

By E. Redmayne,
Deputy.

Copy of the within affidavit received this 4th day of December, 1926.

BERTIL E. JOHNSON,
Asst. U. S. Atty.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. —.

DAVE NIELSON, CHARLES NIELSON and
JAMES E. REESE,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

STIPULATION RE HEARING MOTION FOR
SUPERSEDEAS.

IT IS HEREBY STIPULATED by and between the plaintiffs in error and the defendant in error that the motion of the plaintiffs in error for supersedeas may be heard by the Court without the same being regularly placed upon the docket and that said motion may be submitted to the Court without the presence of counsel.

Dated this fourth day of December, 1926.

WESLEY LLOYD,

A. J. CROTEAU,

FRANK S. CARROLL,

Attorneys for Plaintiffs in Error.

THOS. P. REVELLE,

United States Attorney,

BERTIL E. JOHNSON,

Asst. United States Attorney,

Attorneys for Defendant in Error.

[Endorsed]: Filed Dec. 7, 1926. F. D. Monckton, Clerk.

United States District Court, Western District of
Washington, Southern Division.

No. 5436.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVE NIELSON, CHARLES NIELSON,
JAMES E. REESE and NOLAND
NELSON,

Defendants.

WRIT OF ERROR.

United States of America,
Ninth Judicial Circuit.

The President of the United States of America:

To the Honorable Judge of the District Court
of the United States for the Western District
of Washington, Southern Division:

Because, in the records and proceedings, as also in the rendition of judgment of a plea, which is in the said District Court before you, between the United States as plaintiff and Dave Nielson, Charles Neilson and James E. Reese as defendants, a manifest error hath happened to the great damage of the said defendants and each of them as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, where said court is sitting, within thirty days from the date hereof, to wit: 4th day of January, 1927, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be

done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States of America, this 4th day of December, 1926.

[Seal]

ED. M. LAKIN,
Clerk of the United States District Court for the
Western District of Washington, Southern
Division.

By Alice Huggins,
Deputy Clerk.

Service admitted Dec. 4th, 1926.

BERTIL E. JOHNSON,
Asst. U. S. Atty.

Filed Dec. 4, 1926.

[Endorsed]: Filed Dec. 7, 1926. F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

DAVE NIELSON, CHARLES NIELSON, and
JAMES E. REESE,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Supplemental Transcript of Record.

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Southern Division.

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

LLOYD, WESLEY, Perkins Building, Tacoma,
Washington,

CROTEAU, A. J., Perkins Building, Tacoma,
Washington,

CARROLL, FRANK S., Equitable Building, Ta-
coma, Washington,

Attorneys for Plaintiffs in Error.

REVELLE, THOS. P., United States District At-
torney for the Western District of Washing-
ton, Federal Building, Seattle, Washington,

JOHNSON, BERTIL E., Assistant U. S. District
Attorney, Federal Building, Tacoma, Wash-
ington,

Attorneys for Defendant in Error. [1*]

In the United States District Court, Western Dis-
trict of Washington, Southern Division.

No. 5,436.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVE NIELSEN, CHARLES NIELSEN,
JAMES E. REESE and NOLAND NEL-
SON,

Defendants.

*Page-number appearing at the foot of page of original certified
Supplemental Transcript of Record.

BAIL BOND OF DAVE NIELSEN.

KNOW ALL MEN BY THESE PRESENTS, That we, Dave Nielsen, as principal, and John P. Jensen and Clara Jensen, his wife, as sureties, are held and firmly bound unto the United States of America in the penal sum of Three Thousand (\$3,000) Dollars, lawful money of the United States of America, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

WITNESS our hands this 12th day of June, 1926.

The condition of the above obligation is such, that whereas, an indictment or information has been filed with the Clerk of the above-entitled court, a warrant issued thereon charging the said principal with conspiracy to violate Section 37, P. C. (National Prohibition Act and Revenue Acts), and the said principal has been held to appear and answer for trial.

NOW, THEREFORE, if the said principal shall appear and answer the charge above mentioned on the 12th day of June, 1926, and from time to time and from term to term to which the said case may be continued then and there to answer the said charge and shall at all times hold himself amenable to the order and process of the Court and if convicted will appear for judgment and render himself in execution thereof, then this obliga-

tion [2] shall be null and void and of no effect; otherwise to remain and be in full force and effect.

DAVE NIELSEN,

Principal.

JOHN P. JENSEN,

CLARA JENSEN,

Sureties.

United States of America,
State of Washington,
County of Pierce,—ss.

John P. Jensen, being first duly sworn on oath, deposes and says: That he is not an attorney or counsellor at law, sheriff, clerk or officer of any court; that he is a resident of the State of Washington and that he and his wife, Clara Jensen, as a community are the owners of

The Northwest quarter of Section 12, Township 16, North Range 3 East W. M.

and that the same is of the value of more than Five Thousand (\$5,000) Dollars; the said community is worth more than the sum of Five Thousand (\$5,000) Dollars above all just debts and liabilities and property exempt from execution.

JOHN P. JENSEN.

Subscribed and sworn to before me this 12th day of June, 1926.

RALPH WOODS,

Notary Public in and for the State of Washington,
Residing at Tacoma.

United States of America,
State of Washington,
County of Pierce,—ss.

Clara Jensen, being first duly sworn on oath, deposes and says: That she is the wife of the other surety John P. Jensen; that she has read his foregoing justification, knows the contents thereof and the same is true.

Subscribed and sworn to before me this 12th day of June, 1926.

[Seal]

Notary Public in and for the State of Washington,
Residing at Tacoma.

Clara Jensen could not justify because on a jury trying [3] a murder case. She signed in my presence.

(Sgd.) RALPH WOODS.

[Indorsed]: Approved as to form, amount and sufficiency of sureties.

CARROLL A. GORDON,
Asst. U. S. Atty.

[Indorsed]: Approved June 12, 1926.

T. W. HAMMOND,
U. S. Commissioner.

[Indorsed]: Filed Jun. 14, 1926. [4]

[Title of Court and Cause.]

BAIL BOND OF CHARLES NIELSEN.

KNOW ALL MEN BY THESE PRESENTS, That we, Charles Nielsen, as principal, and Oscar Nielsen and Hazel Nielsen, his wife, as sureties, are held and firmly bound unto the United States of America in the penal sum of Fifteen Hundred (\$1,500.00) Dollars, lawful money of the United States of America, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

WITNESS our hands this 14th day of June, 1926.

The condition of the above obligation is such, that whereas an indictment or information has been filed with the Clerk of the above-entitled court, a warrant issued thereon charging the said principal with conspiracy to violate Section 37, P. C. (National Prohibition Act and Revenue Acts), and the said principal has been held to appear and answer for trial.

NOW, THEREFORE, if the said principal shall appear and answer the charge above mentioned on the — day of June, 1926, and from time to time and from term to term to which the said case may be continued then and there to answer the said charge and shall at all time hold himself amenable to the order and processes of the court and if convicted will appear for judgment and render

himself in execution thereof, then this obligation shall be null and void and of no effect; otherwise [5] to remain and be in full force and effect.

CHARLES NEILSEN,
Principal,
OSCAR NEILSEN,
HAZEL NEILSEN,
Sureties.

United States of America,
State of Washington,—ss.

Oscar Nielsen, being first duly sworn on oath, deposes and says: That he is not an attorney or counsellor at law, sheriff, clerk or officer of any court; that he is a resident of the State of Washington; that he and his wife, Hazel Nielsen, as a community, are the owners of

Diagram 4 1 of the Northeast quarter of the Southeast quarter of Section 23, Township 17 North, Range 3 East, W. M.

that the same is of the value of more than Fifteen Hundred (\$1500.00) Dollars above exempt property; that he and the community are worth more than Fifteen Hundred (\$1500.00) Dollars above exempt property or just debts and liabilities and property exempt from execution.

OSCAR NIELSEN.

Subscribed and sworn to before me this 14th day of June, 1926.

[Seal] RALPH WOODS,
Notary Public in and for the State of Washington,
Residing at Tacoma.

United States of America,
State of Washington,—ss.

Hazel Nielsen, being first duly sworn on oath, deposes and says: That she is the wife of the other surety Oscar Nielsen; that she has read his foregoing justification, knows the contents thereof and the same is true.

HAZEL NIELSEN.

Subscribed and sworn to before me this 14th day of June, 1926.

[Seal]

RALPH WOODS,
Notary Public in and for the State of Washington,
Residing at Tacoma. [6]

[Indorsed]: Approved as to form and sufficiency of sureties.

CARROLL A. GORDON,
Asst. U. S. Atty.

[Indorsed]: Filed Jun. 25, 1926. [7]

BAIL BOND OF JAMES CLIFFORD REESE.

5436.

United States of America,
Western District of Washington,
Southern Division.

BE IT REMEMBERED, That on this 11th day of June, A. D. 1926, before me, a United States Commissioner for the said Western District of Washington, Southern Division, personally came James Clifford Reese, principal, and John L. Reese,

a widower, and B. D. Minnick and Margaret Minnick, husband and wife, sureties, and jointly and severally acknowledged themselves to owe the United States of America the sum of One Thousand Five Hundred Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:

THE CONDITION of this recognizance is such that if the said James Clifford Reese shall personally appear before the Judge of the United States District Court of Western Washington, Southern Division, holding terms at Tacoma, at and on the first day of the next term of said Court, to wit, the first Tuesday in July, A. D. 1926, being the sixth day of July, A. D. 1926, at 10:00 o'clock A. M. of said day, and from time to time thereafter, to which the case may be continued, then and there to answer the charge of having, on or about the — day of June, 1926, within said District, conspired with others to violate the National Prohibition Act, and conspired to violate sec. 37 of the Penal Code of the United States of America, such conspiracy embracing the one or the other of the National Prohibition Act or Revenue Acts or Laws in existence prior to the passage of the National Prohibition Act, unlawfully and contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America, and then and there abide the orders of said Court, and not depart from said District without leave, then this recog-

nizance to be void; [8] otherwise to remain in full force and virtue.

JAMES CLIFFORD REESE. (Seal)

JOHN L. REESE, Sr. (Seal)

B. D. MINNICK. (Seal)

ETTA MARGARET MINNICK, (Seal)

United States of America,
Western Dist. of Washington,
Southern Division,—ss.

John L. Reese, widower, a surety on the annexed recognizance, being duly sworn, deposes and says: That he resides at 733 Market Street, in the City of Tacoma, in said Western District of Washington; that he is a freeholder in the City of Tacoma, Pierce County, Washington and Lewis County, Washington; that he is worth the sum of Thirty Thousand (\$30,000.00) Dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of the Northeast quarter of the Southeast quarter of Section 27, Township 15 North, Range 6 East of the Willamette Meridian; also the West half of Sec. 27, Township 13 North, R. 4 West, W. M., consisting of 320 acres; also the N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 27, Twp. 13, R. 4 W., W. M., and S./2 of N. E. $\frac{1}{4}$, Sec. 27, Tp. 13, R. 4 W., W. M., also S. E./4, Sec. 27, Tp. 13 N., R. 4 West, W. M., all in Lewis County, Washington, except first 80 acres in Pierce County, Washington, and first 80 acres improved property and the 600 acres Lewis County timber land.

JOHN L. REESE, Sr.

Subscribed and sworn to before me this 11th day of June, 1926.

[Seal] P. L. PENDLETON,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Form approved.

CARROLL A. GORDON,
Asst. U. S. Atty.

United States of America,
Western Dist. of Wash.,
Southern Division,—ss.

B. D. Minnick and Margaret Minnick, his wife, sureties on the annexed recognizance, being duly sworn, depose and say: They are husband and wife and residents of Tacoma, Washington, residing at 913½ Commerce Street; that they are freeholders in Western Dist. of Washington and are, as a community worth the sum of Six Thousand Dollars and more, over and above all their just debts and liabilities, in property subject to execution and sale, and that their property consists of: Beg. at S. W. Cor. Sec. 5, A. C. pt. West cor. 13.40 feet So. of Cor. R. D. Lot 3, then along N. E. line to West side of Dairy Co. dist. 78 feet, east 340 feet; thence So. [9] 78 feet W. 480 feet to place beginning, improved property, value more than \$6,000.00.

B. D. MINNICK.

ETTA MARGARET MINNICK.

Subscribed and sworn to before me June 11, 1926.

[Seal] P. L. PENDLETON,
Notary Public, Tacoma, Wash.

[Indorsed]: Approved June 11, 1926.

T. W. HAMMOND,
U. S. Commissioner.

[Indorsed]: Filed June 12, 1926. [10]

[Title of Court and Cause.]

PRAECIPE FOR SUPPLEMENTAL TRAN-
SCRIPT OF RECORD ON WRIT OF ERROR.

To the Clerk of the United States District Court
for the Western District of Washington,
Southern Division.

You will please prepare and certify and authenti-
cate copies of the following instruments on file
in your office:

Bail Bond of Dave Nielsen.

Bail Bond of Charles Nielsen.

Bail Bond of James *E.* Reese.

This Praecipe.

—the same to be furnished as a supplemental tran-
script of record in the prosecution of writ of error
to the United States Circuit Court of Appeals for
the Ninth Circuit.

LLOYD & CROTEAU,
FRANK S. CARROLL,
Attorneys for Defendants,
Office and P. O. Address:

140 Perkins Building, Tacoma, Washington.

[Indorsed]: Filed Dec. 11, 1926. [11]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO SUPPLEMENTAL TRAN-
SCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing and attached is a full, true and correct transcript of so much of the record and proceedings in the case of United States of America, Plaintiff, *versus* Dave Nielsen, Charles Nielsen, James Clifford Reese and Noland Nelson, Defendants, Cause No. 5436, in said District Court, as required by supplemental praecipe of counsel filed and shown herein and as the originals appear and of record in my office at Tacoma in said District.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office on behalf of the plaintiffs in error for making the supplementary record and certificate to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's Fees (Act. Feb. 11, 1925) for making	
record and return 22 fols. @ 15¢ each....	\$3.30
Clerk's Certificate50

ATTEST my hand and the seal of said District Court at Tacoma, in said District, this 11th day of December, A. D. 1926.

[Seal]

ED. M. LAKIN,
Clerk.

By Alice Huggins,
Deputy. [12]

[Endorsed]: No. 5021. United States Circuit Court of Appeals for the Ninth Circuit. Dave Nielson, Charles Nielson and James E. Reese, Plaintiffs in Error, vs. United States of America, Defendant in Error. Supplemental Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

Filed December 13, 1926.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

